Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1735

MARY WILLIAMS, ET AL.,
Appellants

versus

JOHN R. JONES, as County Appraiser of Escambia County, Florida, formerly known as Tax Assessor of Escambia County, Florida; E. J. GIBBS, JR., as Tax Collector of Escambia County, Florida; GRADY ALBRITTON, ZEARL R. LANCASTER, SAM ARMOUR, L. D. McARTHUR and CARL WEST, as and constituting the Board of Tax Adjustment of Escambia County, Florida; and STATE OF FLORIDA DEPARTMENT OF REVENUE,
Appellees

- - - - - - - -

DUNES MOTEL, INC., ETC., ET AL.,
Appellants
versus
JOHN R. JONES, ETC., ET AL.,
Appellees

- - - - - - - -

JOHN J. LERGENMILLER, JR., ET AL.,
Appellants
versus
JOHN R. JONES, ETC., ET AL.,
Appellees

- - - - - - - -

On Appeal From the Supreme Court of Florida

- - - - - - - -

JURISDICTIONAL STATEMENT

J. McHenry Jones
J. McHENRY JONES
Post Office Box 732
Pensacola, Florida 32594

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1975

NO.

MARY WILLIAMS, et al.,
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JOHN R. JONES, as County Appraiser, et al.,

Appellees

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

OPINION BELOW

The judgment of the trial court is not reported and is set forth in App. p. 25A to 40A. The cases below were considered together but separate judgments were entered in the lower courts and insofar as the constitutional questions here involved, were identical. These cases were consolidated by the Supreme Court of Florida, and one opinion, only, was rendered, entitled:

MARY WILLIAMS et al., Appellants,
vs.
JOHN R. JONES, as County Appraiser,
etc., et al., Appellees.

DUNES MOTEL, INC., a Florida Corporation,
et al., Appellants,

vs.

JOHN R. JONES, as County Appraiser,
etc., et al., Appellees.

JOHN J. LERGENMILLER, JR., et al.,
Appellants

vs.

JOHN R. JONES, as County Appraiser,
etc., et al., Appellees.

and the case is reported in 326 So. 2d 425. (App. 41A) Petition for Rehearing was denied March 4, 1976. (App. 60A)

In view of the consolidation, only one jurisdictional statement is required by Rule 15(j) (3). Pertinent extracts from the complaint and the complete judgments in the Dunes case, only, are included in the Appendix, as the judgment in the lower Court in such case and subsequent Supreme Court opinion cover all questions involved in all of the consolidated cases.

The statute here attacked was involved in the case of *Straughn, et al. v. Camp, et al.*, 293 So.2d 689, 419 U.S. 891, 42 L.Ed. 2d 135, 955 S.Ct. 168, but the questions raised here were not involved or decided.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2). The appellants challenged the validity of Chapter 196.001(2) and 196.199(6), F.S. (Florida Statutes), as being repugnant to the Constitution of the United States and as denying appellants equal protection of the law under

the XIV Amendment of the U. S. Constitution.

Suit was instituted by appellants as authorized under Chapter 194.171, F.S., against appropriate county officers and State of Florida Department of Revenue, alleging that taxes imposed on their leasehold interests were unlawful and invalid because of the unconstitutionality of the statutes above cited.

The lower Court on May 13, 1975, entered a judgment granting a motion of the appellees to dismiss the complaints (App. 25A), which judgment was amended (App. 39A) on May 15, 1975. The judgment, as amended, allowed 10 days for filing of an amended complaint, and if no appeal was taken and if no further amended complaint was filed, a final judgment "should be prepared by defendants' counsel and shall incorporate the findings made herein." (App. 40A), and petition for rehearing in the Supreme Court of Florida was denied on March 4, 1976. (App. 60A) No amended complaint was filed on or before March 15, 1976, therefore the judgment became final on that date. See certificate, (App. 61A)

While no formal final judgment was prepared and entered, the judgment of the Circuit Court finally determined the constitutional issues.

The Supreme Court of Florida affirmed the orders appealed from (App. 59A) and specifically held the challenged acts valid and constitutional (App. 41A, 49A), therefore the judgment of the Supreme Court on the question is a final judgment.

Board of County Commissioners, etc. v. Lucas (1876) 93 US 108; 23 L.Ed. 822;

Dept. of Banking, etc. v. Pink (1942) 63 S.Ct. 233, 317 U.S. 264, 87 L.Ed. 254;

Cole v. Violette (1943)
63 S.Ct. 1204, 319 U.S. 581, 87 L.Ed. 1599.

Timely notices of appeal were filed in the Supreme Court of Florida on April 12, 1976, and the Circuit Court of the First Judicial Circuit of Florida on April 9, 1976.

Both the Circuit Court and Supreme Court having held that Chapters 196.001(2) and 196.199(6), F.S., do not violate the Federal Constitution, this appeal is appropriate.

In event the Court does not consider an appeal to be proper and appropriate procedure for review, appellants request that the prayers and proceedings herein be regarded and acted upon as a petition for certiorari under 28 U.S.C. § 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This appeal involves the XIV Amendment of the Constitution, it being contended that the statutes assailed deny the appellants equal protection of the law and that they discriminate against them.

Chapter 196.001, F.S., provides as follows:

> "Property subject to taxation. - Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:

> (1) All real and personal property in this state and all personal property belonging to persons residing in this state; and
>
> (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state."

Chapter 196.199(6), F.S., provides as follows:

> "Property which is originally leased for 99 years or more, exclusive of renewal options, shall be deemed to be 'owned' for purposes of this section."

QUESTIONS PRESENTED

There are two questions submitted to the Court for consideration, as follows:

1. Does *Chapter 196.199(6), F.S.*, which requires assessment and taxation of leasehold interests, which are initially for 99 years, as if the land and improvements are owned in fee by the lessee, discriminate and deny equal protection of the law to such lessees, as (a) the leases provide for forfeiture and termination on at least 21 grounds and (b) lessees who have identical leasehold rights for the same unexpired term whose leases were not initially for 99 years are not assessed as being the owner of the leased land and the improvements thereon?

2. Does *Chapter 196.001,F.S.*, which authorizes the assessment and levy of ad valorem taxes against leasehold

interests, but confines the assessment and levy to those leasehold interests relating to lands governmentally owned, discriminate against and deny equal protection of law to such leaseholders, as the law does not apply to *all* leasehold interests?

STATEMENT

1. HISTORY OF SANTA ROSA ISLAND, FLORIDA AND LEGISLATIVE ACTS REGARDING SAME

Escambia County secured title to a portion of Santa Rosa Island, Florida, which was under the jurisdiction of the Department of Interior by deed of conveyance of the United States of America, dated January 15, 1947, which provided that the land conveyed shall be retained by Escambia County and "be used by it for such purpose as it shall deem to be in the public interest, or be leased by it from time to time in whole or in part or parts to such persons and for such purposes as it shall deem to be in the public interest."

In 1947 the Legislature of Florida by Chapter 24,500, Laws of Florida, 1947 (Special Acts of Florida, 1947, Vol. 2, Part 1, pp. 836-845), authorized the County to lease the property in whole or in part or parts to such person or persons and for such purposes as it shall deem to be in the public interest.

The 1947 Act authorized the County Commissioners to purchase, contract, improve, own, maintain and operate, either directly or by way of con-

tract or lease, facilities and improvements upon the property aforesaid, including, among other things, hotels, restaurants, cottages, homes, dwellings, tourist camps, and other places of lodging and eating places of all kinds, office and store buildings, and all other kinds of public or commercial properties. It authorized the County Commissioners to acquire all property necessary, desirable or convenient for the purposes of the Act, and to sell, convey, lease, rent or assign all or any part thereof, and further authorized the Board of County Commissioners to advertise the island or any of the improvements thereon in such manner as is deemed advisable. All powers necessary, desirable or convenient to carry out the purposes of the Act were granted to the Board of County Commissioners, who were authorized to and did delegate those powers to an agency known as the Santa Rosa Island Authority.

By enactment of Chapter 25,810, Laws of Florida, 1949 (Special Acts of Florida, 1949, Vol. 2, Part 1, pp. 664-666), the Legislature in 1949 determined and declared that all of the powers conferred upon the Board of County Commissioners of Excambia County and upon the Santa Rosa Island Authority, or either of them, by the 1947 Act (Chapter 24,500), and the exercise of such powers or any of them constitute and are county purposes.

The Legislature in Chapter 25,810 declared that "all of the real and personal property owned, controlled or used by Escambia County, Florida, or

> Santa Rosa Island Authority under or by virtue of Chapter 24,500, or for any of the purposes thereof, including real and personal property rented or leased to others by said county or said Santa Rosa Island Authority, shall be exempt from state, county, municipal, and all other ad valorem taxes of every other kind."

The Supreme Court of Florida held that appellants leaseholders were exempt from all taxation in the case of *State v. Escambia County* (1951), 52 So. 2d 125, Syl. 6:

> "In Special Act providing for development of Santa Rosa Island facilities, provision exempting from state, county, municipal and all other ad valorem taxes of every kind, all of the real and personal property owned, controlled or used by the County of Escambia or the Santa Rosa Island Authority, is not violative of constitutional provision limiting legislature's right to grant tax exemption. . ."

Twenty years later the Legislature enacted *196.001, F.S.*, supra, and the Supreme Court of Florida in the case of *Straughn v. Camp,* supra, held that this law which authorized the taxation of the leaseholds constituted no impairment of leases dated prior to the effective date of the above law. The question of impairment is not involved in the case at Bar.

Prospective lessees were assured by governmental agencies that no ad valorem taxes would be levied and appellants were induced to enter into the leases which provided for the payment of rentals and that improvements on the land, constructed by the lessees, would become county property.

2. COURT PROCEEDINGS

Appellants instituted their suits and the lower Court (App. 1A) and the Supreme Court (App. 41A) denied relief, holding that the statutes above cited did not discriminate against nor deny appellants equal protection of the law as guaranteed by the Federal Constitution.

3. HOW FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The challenge of denial of equal protection of law guaranteed by the Federal Constitution and discrimination was raised in paragraphs 6, 8 and 9 of the complaint. (App. 5A-7A)

The lower Court held that there was no such denial of discrimination. (App. 32A-34A)

The Supreme Court of Florida affirmed the decision on Federal constitutional questions. (App. 41A, 49A, 56A)

FIRST QUESTION

DOES CHAPTER 196.199 (6) F.S., WHICH REQUIRES ASSESSMENT AND TAXATION OF LEASEHOLD INTERESTS, WHICH ARE INITIALLY FOR 99 YEARS, AS IF THE LAND AND IMPROVEMENTS ARE OWNED IN FEE BY THE LESSEE, DISCRIMINATE AND DENY EQUAL PROTECTION OF THE LAW TO SUCH LESSEES, AS (a) THE LEASES PROVIDE FOR FORFEITURE AND TERMINATION ON AT LEAST 21 GROUNDS AND (b) LESSEES WHO HAVE IDENTICAL LEASEHOLD RIGHTS FOR THE SAME UNEXPIRED TERM WHOSE LEASES WERE NOT INITIALLY FOR 99 YEARS ARE NOT

ASSESSED AS BEING THE OWNER OF THE LEASED LAND AND THE IMPROVEMENTS THEREON?

Chapter 196.199(6), F.S., is as follows:

> "Property which is originally leased for 99 years or more, exclusive of renewal options, shall be deemed to be 'owned' for purposes of this section."

Chapter 196.199(6), F.S., mandates taxing of leaseholds initially for 99 years on a basis that it is equivalent of ownership of the *fee*. It is obvious that a residential lease which contains 28 grounds of forfeiture (and a commercial lease containing 33 grounds), which requires construction of improvements meeting certain specifications, subject to approval by the Lessor, and which requires the payment of periodical rentals, is not the equivalent of fee ownership. The lessee of property leased for commercial operations must charge rates approved by the lessor and keep open for business certrain hours of the day and months of the year, whereas the owner of a fee has no such obligation.

The following are grounds of default and termination existing in the leases of all appellants:

A. Non payment of rent. (paragraph 2) (App. 9A)

B. Failure to commence construction of improvements within a specified time after date of lease and complete within a specified time. (paragraph 3) (App. 12A)

C. Failure to commence and complete construction after notice. (paragraph 4) (App. 12A)

D. Failure to repair or rebuild, at lessee's cost, any building damaged or destroyed by "fire, windstorm, water or any other cause whatsoever, to place in same condition as existed before the casualty. (paragraph 5) (App. 12A)

E. Failure to "exclusively use" *at rates fixed by the Authority*, "such public utilities and public services relating to health and sanitation" made available by Authority or others under agreement or license, including: electricity, gas, water, telephone and telegraph, sewage and garbage disposal or collection. (paragraph 9) (App. 14A)

F. Use or occupancy for a purpose specified in the lease. (paragraph 10B) (App. 15A)

G. Permit or suffer a nuisance or illegal course of conduct. (paragraph 10C) (App. 15A)

H. Violation of covenants and restrictions:

(1) Nuisance, illegal, offensive or obnoxious trade, business or "operation". (paragraph 1) (App. 19A)

(2) Failure to keep leased premises in "good repair", "painted", "clean and sanitary" and "surrounding areas, including streets, beaches and neighboring lots free from trash, debris and obstructions" caused by lessee. (Par. 2) (App. 19A)

(3) Emptying "sewage, waste, trash or debris" into adjacent waters. (Par. 3) (App. 19A)

(4) Failure to construct septic tanks in accordance with rules of Authority. (Par. (4) - App. 19A)

(5) Failure to observe rules of Authority, State Board of Health and other governmental authorities relating to health, sanitation "and the public welfare". (Par. (5) - App. 19A)

(6) Construct buildings, fence, wall, walk, driveway, roadway, parking area, pier, dock, sea wall or other structure without approval of Authority. (Par. (6) - App. 19A)

(7) Constructing of a building contrary to building code. (Par. (7) - App. 20A)

(8) Construction contrary to set back line. (Par. (9) - App. 20A)

(9) Construction of docks, piers, buildings and structures below "high water mark" without written approval of the Authority. (Par. 9 - App. 21A)

(10) Drilling a well without approval of the Authority. (Par. 10 - App. 21A)

(11) Refusal to allow Authority to enter and construct on a five foot easement, pipes, power and telephone lines, storm sewers, drains, etc. (Par. 11 - App. 21A)

(12) Failure to allow or pay for cleaning of lessee's lot by Authority. (Par. 12 - App. 21A)

(13) Erection of a sign without lessor's approval. (Par. 13 - App. 22A)

(14) Failure to provide off street parking. (Par. 14 - App. 22A)

(15) Making or causing deliveries to be made during hours prohibited by Authority. (Par. 15 - App. 22A)

(16) Failure of an operator or employee of commercial establishments, when required, to carry badges, cards, or other identification. (Par. 16 - App. 22A)

(17) Keeping of livestock, animals and chickens on island, or letting dogs and cats on beaches without leash or muzzled. (Par. 17 - App. 22A)

(18) Erection of tents, trailers, temporary structures or mooring of houseboats, except where expressly set aside by Authority. (Par. 18 - App. 22A)

(19) Breach of reclassification for zoning hereafter adopted. (Par. 19 - App. 22A)

(20) Breach of any change or modification which the Authority shall thereafter adopt. (Par. 20 - App. 23A)

(21) Violation of any covenant or restriction. (Par. 21 - App. 23A)

With respect to the leases of Dunes Motel, Barnes Trustee, and Southhill Corporation, the additional grounds of termination apply:

A. Reimburse Authority for any damages it is required to pay by reason of act or neglect of lessee. (Par. 10 App. 12A)

B. Furnish monthly a record of all daily sales on cash register tape. (Par. 10(d) & (e) - App. 12A)

C. Maintain adequate accurate records open to inspection and audit. (Par. 10(f) - App. 12A)

D. Permit Authority and employees to enter and inspect premises. (Par. 10(g) - App. 12A)

E. To charge for merchandise, rentals and services comparable to other beach resorts in West Florida or to adjust such charges when required so to do by Authority. (Par. 10(h) App. 12A)

F. To offer rental units to public from May 1st to August 31st each year. (Par. 10(i) - App. 12A)

The right of the legislature to *reasonably* classify property for taxation is recognized, but a declaration that leases of the kind involved, which bear no resemblance to a fee estate, should be taxed as a fee estate merely because the term was initially for 99 years is an unreasonable classification.

It is ridiculous to equate the rights of a lessee under this type of lease to a fee estate. The lease carries tremendous burdens which are not present in a fee estate. The legislature has no power to pass a law which deprives a person of the right to have his property taxed at its just value according to the character of the property involved.

The statute, without declaring it to be real property, mandates that the leasehold interest must be assessed at the value of the land plus improvements thereon, when the leaseholder owns neither, and his right to the use of the property is not remotely the same as a fee owner. The Tax Appraiser assessed the property as if lessee owned the fee title.

The rule for valuation of a leasehold interest is set forth in *72 Am.Jur. 2d (par. 768) 89:*

> "In valuing a leasehold interest for tax purposes its value is the value of the term less the rent reserved. The value of the term is fixed with reference to present as well as prospective conditions - not speculative, but actual - its value in money to one who desires to sell but is under no necessity for selling, and to one desirous of buying but under no compulsion to do so. This worth is not measured by the investment or by the duration of the term, but is determined with reference to present as well as prospective conditions, that is, the fair market value of the leasehold interest. The market value of a lease-

hold is to be measured by considering both the benefits to be garnered from the use of the property over the term of the lease *and the burdens placed upon it in terms of restrictions which limit its use,* indebtedness not being such a burden..." (Emphasis supplied)

In the case of *Kentucky Tax Commission v. Jefferson Motel, Inc.*, 397 SW 293, Text 295, the Court said:

"...Basically, however, the proper criterion of fair cash value for any property, including a leasehold, is the price a seller willing but not forced to sell would take and a buyer willing but not forced to buy would give for it..."

See also: *Pier 67, Inc. v. King County*, 78 Wash. 2d 48, 469 P.2d 902 (cert.den. 401 US 911, 27 L.Ed. 2d 546, 91 S.Ct. 876); *State v. Bare*, 60 W.Va. 483, 56 SE 390.

The statute in question does not provide for assessments based on the value of the leasehold interest, but authorizes assessments *on the value of the land and improvements,* neither of which are owned by the lessee. The difference between a long term lease and a short term lease is not a proper basis for the determination of the *taxability* of a lease. *DeVore v. Lee*, 156 Fla. 699, 24 So.2d 234.

The unexpired term of a lease is certainly an element to be considered in fixing the value of a lease, but the initial term has nothing to do with the value of the lease.

The value of a leasehold interest which expires in one year but which initially was for 99 years, is vastly different from the value of a lease initially for 99 years with 98 years unexpired, but both leasehold interests are required to be

assessed as if each lessee owned the fee. Any law which seeks to fix the value of a leasehold interest, because its initial term was for 99 years, deprives the leaseholder of the right to have his property, i.e. leasehold interest, assessed at its just value. It is beyond the power of the legislature to levy an ad valorem tax on one class of property (a leasehold interest) based upon the value of a different class of property (fee).

A leasehold interest initially for a period of 80 years, with 70 years to run and a leasehold interest initially for 99 years with an identical term of 70 years to run, are assessed on a different basis, which is prohibited by the Constitution.

The section denies to the plaintiffs equal protection of the law and deprives such parties from having their property assessed at its just value.

In the case of *Interlachen Estates v. Snyder*, 304 So.2d 433, the Court said: (Text 435)

"We find it impossible to consider Fla.Stat. §196.062(1), F.S.A., as establishing a proper valuation criterion. The statute does no more than establish a classification of property to be valued on a different standard than all other property...."

SECOND QUESTION

DOES CHAPTER 196.001, F.S., WHICH AUTHORIZES THE ASSESSMENT AND LEVY OF AD VALOREM TAXES AGAINST LEASEHOLD INTERESTS, BUT CONFINES THE ASSESSMENT AND LEVY TO THOSE LEASEHOLD INTERESTS RELATING TO LANDS GOVERNMENTALLY OWNED, DISCRIMINATE AGAINST AND DENY EQUAL PROTECTION OF LAW TO SUCH LEASEHOLDERS, AS THE LAW DOES NOT APPLY TO *ALL*

LEASEHOLD INTERESTS?

The appellants contend that they and their leasehold interests are discriminated against and they are denied equal protection of the law, as *Chapter 196.001(2), F.S.*, does not mandate the assessment and levy of taxes against all leasehold interests.

Chapter 196.001(2), F.S., provides as follows:

> "Property subject to taxation. - Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
>
> * * * * * * * *
>
> (2) *All leasehold interests* in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state."

An ad valorem tax is a tax that is levied against the *res* and not the person or owner of the property. It is an in rem proceeding and the owner of the land to which it relates is immaterial.

A classification based upon the ownership is not a reasonable classification when the thing being taxed is the leasehold interest and not the property to which the lease pertains.

The subject of taxation here is leasehold interests, and under the law some leases are taxed and others are not.

In the case of *United States v. County of Allegheny*, 322 U.S. 174, 88 L.Ed. 1209 (Text 1218), the Court said:

> "It is not contended that the scheme of taxation employed by Pennsylvania is anything other than the *old and widely used ad valorem general property tax.* This taxation plan involves the identification and valuation of the variable individual holdings to be taxed, commonly called the assessment, the application of a uniform rate calculated on the need for public revenues, and the collection, in default of payment, by distraint and sale of the property assessed and taxed. *This form of taxation is not regarded primarily as a form of personal taxation but rather as a tax against the property as a thing. Its procedures are more nearly analogous to procedures in rem than to those in personam.* While personal liability for the tax may be and sometimes is imposed, the power to tax is predicated upon jurisdiction of the property, not upon jurisdiction of the person of the owner, which often is lacking without impairment of the power to tax. In both theory and practice *the property is the subject* of the tax and stands as security for its payment." (Emphasis supplied)

The ad valorem taxes must be levied against *all* leasehold interests at a uniform rate and it must operate against the property not the person. If some property (leasehold interests) are excluded from the levy of ad valorem taxes the tax does not operate uniformly against *all* leasehold interests.

In the case of *Hopkins v. Southern California Telegraph Company*, 275 U.S. 393, 48 S.Ct. 180, 72 L.Ed. 329, Text

403, the Court said:

> "...and the 14th Amendment protects those in the same class as against unequal taxation; all are entitled to like treatment."

If the Legislature determines to tax leasehold interests, it is required to tax all leasehold interests in order that all leaseholders would have equal protection of the law and so that taxes would be imposed uniformly. This the Legislature did not do.

Being an in rem proceeding, the Legislature may not select for taxation certain leasehold interests and omit others.

It is submitted that a tax must be levied against the res of similar property, that is to say, all leasehold interests, irrespective of the ownership of the lessor.

CONCLUSION

It is respectfully submitted that one section of the Statute attempts to transform the character of a legal instrument into something that it does not remotely resemble and the other section challenged levies and ad valorem tax on appellants' leaseholds without levying such tax on other leaseholders enjoying similar rights under their leases.

The appellants in each instance are denied equal protection of the law and urge that the Court accept jurisdiction and that the cause receive plenary consideration.

J. McHenry Jones of
J. McHENRY JONES, P.A.
703-5 South Palafox Street
Post Office Box 732
Pensacola, Florida 32594
Attorneys for Appellants

PROOF OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Jurisdictional Statement has been furnished to:

J. B. Hopkins, Esq.
The Lawyers Building
314 South Baylen Street
Pensacola, Florida 32501
Counsel for: John R. Jones, Tax Appraiser

Bert Lane, Esq.
Beggs and Lane
Brent Annex Building
Pensacola, Florida 32501
Counsel for: E. J. Gibbs, Jr., Tax Collector

Jack H. Greenhut, Esq.
Professional Building
West Government Street
Pensacola, Florida 32501
Counsel for: Board of Tax Adjustment

Honorable Robert L. Shevin
Attorney General
The Capitol
Tallahassee, Florida 32304
Attention: Larry Levy, Esq.
Assistant Attorney General
Counsel for: Florida Revenue Department

Gerald L. Brown, Esq.
Wells, Brown, Caton & Brady
Post Office Box 12584
Pensacola, Florida 32573
Co-Counsel for:
John R. Jones, Tax Appraiser

This day of May, 1976.

J. McHenry Jones
Attorney for Appellants

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, IN AND FOR ESCAMBIA COUNTY, FLORIDA

*DUNES MOTEL, INC., a Florida corporation,
Plaintiff

versus

JOHN R. JONES, as County Appraiser of Escambia County, Florida, formerly known as Tax Assessor of Escambia County, Florida; E. J. GIBBS, JR., as Tax Collector of Escambia County, Florida GRADY ALBRITTON, ZEARL R. LANCASTER, SAM ARMOUR, L. D. McARTHUR and CARL WEST, as and constituting the Board of Tax Adjustment of Escambia County, Florida; and STATE OF FLORIDA DEPARTMENT OF REVENUE,
Defendants.

"Plaintiff" as used herein shall mean the party or parties above named as a party or parties plaintiff in the above caption of this case.

1. The plaintiff is the owner of a leasehold interest, binding on Escambia County, Florida, with respect to lands described in a lease dated prior to December 31, 1971, a copy of said lease is attached as Exhibit "C". The lease authorizes occupancy of the property as a motel or hotel. The said lands and the improvements thereon are owned by Escambia County, Florida, and are

*This case was consolidated by the Florida Supreme Court with the cases of Mary Williams, John J. Lergenmiller, Jr., against the same defendants. The above complaint, and exhibits thereto, as amended, will contain excerpts common to all complaints necessary for consideration of this case and omit material not required for consideration by the Court.

immune from the levy of ad valorem taxes, but the leasehold interest of plaintiff may be subject to taxation. Attached as Exhibit "B" is a true copy of the conveyance from the United States of America to Escambia County, whereby said county acquired title. The individual defendants above are, respectively, the duly qualified and acting officers of Escambia County, as above indicated, and the State Department of Revenue is the Department of the State of Florida having general supervision of the assessment and collection of county ad valorem taxes.

2. That Escambia County acquired title to Santa Rosa Island for the purpose of developing a recreational area for the citizens of Escambia County, and to induce tourists from Florida and the other States of the Union to use the facilities; that located on the Western extremity of the Island is Fort Pickens, constructed prior to the Civil War, a structure of great historical significance; that said Fort and the land surrounding the same for a long period of time was operated as a State Park by the State of Florida and thereafter was acquired by the Federal Government under the Gulf Seashore Act; that Siguenza Point, located on the Island, West of Fort Pickens, and at the entrance to Pensacola Bay is an area where Spanish forts were located and battles occurred between the Spanish and the French; immediately East of Fort Pickens is the third site of the City of Pensacola established by the Spanish in 1719; that Santa Rosa Island consists of beautiful white beaches bounded on the North by Pensacola Bay and Santa Rosa Sound, and on the South by the Gulf of Mexico, which have been used for recreation since time immemorial; that Chapter 24,500, Special Laws of Florida, 1947, created the Santa Rosa Island Authority and delegaged to it the duties imposed upon the Board of County Commissioners in developing the recreational area. That Escambia County, Florida (and its agency the Santa Rosa Island Authority sometimes

called "Island Authority"), under the above law was and is authorized:

> "To purchase, construct, extend, improve, own, maintain, insure and operate, either itself or by contract or lease with individuals, firms or corporations, all or any of the following: Toll or free bridge or bridges across Santa Rosa Sound and any other waters or swamps and lowlands adjacent to or a part of the Island; boats and car ferries to and from the Island; ports, harbors, airports for land or seaplanes, and shipping and airport facilities on the Island or elsewhere in connection with service to and from the Island; board walks, sea walls, breakwaters, bulkheads, causeways, wharves, docks, piers, yacht basins and jetties; sewerage systems, water systems, fire fighting systems and equipment, power lines and cables, gas systems and any other utilities desirable or convenient for the development and service of the Island and persons, businesses and improvements thereon; streets, roads, alleyways, sidewalks and other public ways; parks, playgrounds, recreation and amusement buildings and centers, bathing beaches, bath houses, swimming pools, auditoriums, theaters, churches, houses of worship, pavillions, athletic fields, golf courses, and other buildings and places of all kinds for the assembly, entertainment, health, welfare and recreation of the public; *hotels, restaurants, eating places,* cottages, homes, dwellings, *tourist camps and other places of lodging and eating* places of all kinds, taxi cabs, busses and transportation systems; office and store buildings, warehouses, depots, stations, and all other kinds of business or commercial properties; administration buildings and offices for use of the County Commissioners or the Authority." (Underscoring by counsel)

That Escambia County and the Island Authority caused toll bridges to be constructed to facilitate travel and development of the beaches and property.

That the recreational facilities were and are widely advertised in Florida, Alabama, Mississippi, Louisiana and other states, through newspapers, bill boards and in tourist oriented magazines, and a lesser amount by radio advertising; that public funds were and are used for such purposes; that a large number of tourists began to congregate on the Island with inadequate lodging and eating facilities.

That in 1954, in order to supply the deficiency in suitable lodging accommodations for the proper development of the recreational aspects of the beaches and historical sites, and in order to provide facilities for transient and others who desired to enjoy the recreational advantages offered by the beaches, including but not limited to swimming, surfing, boating and other recreational pursuits, and those visiting the historic sites, the Santa Rosa Island Authority, with public funds, under statutory authority, constructed for the county in one area 55 beach rental cottages and operated such facility in the manner of a motel.

That in order to induce parties to provide essential facilities such as motels and restaurants, the Island Authority represented publicly and to prospective lessees who would operate the facilities, that no ad valorem taxes would be levied against such facilities, and a number of private parties signified their interest in operating such facilities to provide such services for the traveling public, executed leases and constructed motels, one of whom is the plaintiff.

* * * * * * * * * * *

3. A. The County Tax Assessor, now known as County Appraiser, assessed the leasehold of the plaintiff for the

taxable years specified on Exhibit "A". The assessment set forth on Exhibit "A" for 1974 is th assessment as finally determined, which appears on the county tax assessment roll. That taxes for 1974 have been levied against the leasehold of plaintiff in the approximate amount specified on Exhibit "A" hereto attached. The county ad valorem tax roll for the year of 1974 was certified on December 24, 1974, and contains the assessments specified on Exhibit "A".

* * * * * * * * * * *

C. That the defendant County Appraiser in assessing the taxes for the years of 1972 and 1973 and 9174, complied with the requirements of Chapter 196.199(6), F.S., and assessed the leasehold interest as if the plaintiff had been the owner of the land and the improvements thereon.

* * * * * * * * * * *

6. DISCRIMINATION - DENIAL OF EQUAL PROTECTION

Plaintiff alleges that Section 196.001(2), Florida Statutes, is void and unconstitutional, as it violates Section 2 of Article I, and Section 2 of Article VII, of the Constitution of Florida, and the XIV Amendment of the United States Constitution in that:

A. It discriminates against persons owning leasehold interests relating to properties owned by governments and their agencies, and does not levy a similar tax on leaseholds with respect to privately owned land.

B. It does not assess or tax all leasehold interests, uniformly.

* * * * * * * * * * *

8. DISCRIMINATION - DENIES EQUAL PROTECTION

Chapter 196.199(6), Florida Statutes, denies plaintiff equal protection of the law and discriminates against the plaintiff and violates Section 2, Article I and Section 2, Article VII of the Florida Constitution, and the XIV Amendment to the United States Constitution, for the following reasons:

A. It arbitrarily specifies that leasehold interests "originally leased for 99 years", be assessed and taxed as fee ownership.

B. No persons holding leasehold interests in lands, other than leasehold interests in governmental lands, are treated as "Owners" for the purpose of assessment and taxation.

C. All leasehold interests initially for a term of 99 years are not assessed and taxed in the manner the plaintiff's leasehold interest is assessed and taxed.

D. It does not apply to leases originally for 98 years 364 days.

E. It applies to leases "originally for 99 years", notwithstanding the fact that many years of the term of the lease of the plaintiff and others expired prior to December 31, 1971, the effective date of Chapters 196.001, 196.199(6), Florida Statutes.

F. That a leasehold interest subject to conditions, limitations and forfeiture cannot, for the purpose of taxation, be considered the same as fee simple ownership of the lands and the improvements thereon.

9. DUE PROCESS VIOLATED. That Chapter 196.199(6) Florida Statutes, takes property without due process of law,

in that (a) the legislative act reforms and changes leasehold interests in contract, for purposes of taxation, into a freehold; and (b) increases the burden of the lessee by subjecting lessee's properties other than the leasehold to liens, execution and sale under 196.199(7), Florida Statutes.

* * * * * * * * * * *

WHEREFORE, Plaintiff prays for relief as follows:

* * * * * * * * * *

D. That the Court will enjoin the Defendants from retaining any portion of the taxes levied which the Court determines to be illegal and void, and will enter judgment against the Defendant Tax Collector and Defendant Department of Revenue, for return of any illegal or void portion of taxes paid by Plaintiff.

* * * * * * * * * *

EXHIBIT "C"

THIS LEASE AGREEMENT entered into by and between Santa Rosa Island Authority, herein called Authority, as an agency of Escambia County, Florida, and JERRY J. BABIN AND AFCO, INC., PENSACOLA BEACH, FLORIDA.

HEREIN CALLED LESSEE, WITNESSETH:

(1) The Authority does hereby grant, demise and lease to the lessee for the full period of 99 years from the date hereof, or until this lease is sooner terminated as herein provided, the following described premises on Santa Rosa Island in Escambia County, Florida, to-wit:

A portion of Block "H", first addition to Villa Sabine, as filed in the records of Escambia County, Florida, in Plat Book 5 of said county, at page 75, and dated the 28th day of November, 1960, and more specifically described as follows:

Beginning at the Northeast corner of Block "H", of said subdivision, thence West along South right-of-way of Ft. Pickens Road a distance of 600 feet to the point of beginning; thence South on a 90 degree deflection angle in a Southerly direction a distance of 260 feet, more or less, to the mean high water line of the Gulf of Mexico; thence Westerly and Southerly along said mean high water line to its intersection with the West line of said Block "H"; thence Northerly and Westerly along said West line a distance of 303 feet, more or less, to its intersection with the South right-of-way of Ft. Pickens road, thence Easterly along said right-of-way to the point of beginning; containing approximately 3.1 acres.

The lessee agrees to maintain a minimum elevation of 11 feet above mean low water at or near the South building line, as established by the Authority, to a minimum at the North boundary line of 1 foot below the crown of the center line of the paving of Ft. Pickens road along said North boundary.

(2) Lessee covenants and agrees to pay, and the Authority hereby reserves, as rental for this lease, commencing with the first lease year in which lessee opens for business on the demised premises, the greater of a minimum annual rental of $2,500.00 or the aggregate of the following percentages of gross receipts from all sources whatsoever in the operation of businesses authorized by this lease on or about the leased property and from the use of the said property and the improvements thereon:

2% of gross receipts from food sales and beer and wine plus 6¢ per square foot per year on ground rental on ground space occupied by facilities for the preparation and service of food such as kitchens, dining rooms and other service areas.

5% of gross receipts from sales of all alcoholic beverages other than beer and wine.

5% of gross receipts from all other sources what-soever except room rentals.

The following percentages on gross receipts from room rentals:

5% of the first $12,500.00 of gross receipts per acre of demised premises.

3% of the next $12,500.00 of gross receipts per acre of demised premises.

1% of any such gross receipts in excess of the

above in each of the first five years from the date of opening for business; 2% of such excess during the succeeding five years, and 2 1/2% of such excess for the remainder of the term of this lease after the first 10 years of business.

The percentage rental per fractional acre shall be on a pro-rata basis.

After 15 years of continuous operations of the business on the demised premises the average overall percentage of gross receipts from room rentals payable to the Authority for such 15 years shall be ascertained and in each year beginning with the 16th year the lessee shall pay to the Authority from room rental gross receipts the greater of the resulting rental from the application of the above

scheduled percentage of the application of said average percentage payable during the first 15 years. The appropriate percentages of gross receipts shall be reported and paid to the Authority by the 20th of each month for the preceding month's business, and any adjustments for the lease year shall be made within 30 days after the end of the year. The Authority hereby acknowledges receipt of the sum of $3562.50 as consideration for the execution of this lease which amount shall be credited on the first rentals that shall become due to the Authority hereunder. The term "gross receipts" shall mean the price or consideration received for all merchandise of every kind sold, and the charges or rentals for all services performed or facilities or accommodations furnished by the lessee, any sublessee or any other person, firm or corporation selling merchandise, performing services, or furnishing facilities or accommodations in, upon or from any part of the demised premises, whether for cash or for credit, but shall exclude all returned merchandise accepted by the seller, all allowances nade by the seller to the customer, and the amounts received for Florida sales taxes.

(3) The above described property is leased to lessee as business or commercial property for the purpose of constructing, maintaining and operating a motel and related facilities thereon. Lessee covenants and agrees to erect and complete on the demised premises, according to and in conformity with plans to be approved by the Authority, and to be located on said property in a manner mutually agreeable to the Authority and the lessee,

one or more motel buildings with not less than 50 guest rooms or rental units. Construction thereof shall commence not later than Jan. 15, 1969, and be fully completed and open for business not later than July 1, 1969 unless the times so fixed are extended for good cause by the Authority.

(4) Title to any building or other improvements of a permanent character that shall be erected or placed upon the demised premises by the lessee shall forthwith vest in said Escambia County, subject, however, to the terms of this lease. In event lessee shall not commence or complete the buildings herein required to be constructed within the times provided, and if the Authority shall give lessee written notice to commence or complete the same by a date specified in such notice, which shall be at least sixty (60) days from the date of the giving of such notice, and if the lessee shall fail to commence or complete said buildings on or prior to the date so specified, then and thereupon the term of this lease shall cease on the date specified in said notice, in the same manner and with the same effect as if that were the expiration of the original term of this lease.

(5) In event of damage to or destruction of any building or improvement herein required to be constructed on the demised premises by fire, windstorm, water or any other cause whatsoever lessee shall at its own cost within a reasonable time repair or rebuild such building or improvement so as to place the same in as good and tenantable condition as it was before the event causing such damage or destruction, and

failure to do so shall constitute a breach of this lease.

(6) It is recognized that one of the major purposes of this lease is to provide accommodations and services of high quality and attractiveness. To this end the Authority may from time to time prescribe special requirements relating to landscaping, terraces and patios, walls, fences, shrubbery, and similar improvements designed and intended to enhance and improve the general appearance and attractiveness of the demised premises. Such requirement and provisions may not operate retroactively as to any improvements previously constructed or authorized but may apply to landscaping around such improvements and elsewhere on the demised premises.

(7) Lessee may sell and assign or mortgage this lease, but may not let or under let the demised premises, or any part thereof, without the prior written consent of the Authority, except for normal renting of accommodations to guests in the usual course of lessee's business. So long as a mortgagee keeps on file with the Authority a proper address, notice of any default by the lessee will be sent to the mortgagee at said address at the same time notice of default is sent to the lessee,and this lease may not be terminated for such default until 60 days after notice thereof has been received by such mortgagee, during which period either the mortgagor or mortgagee may make good the default.

(8) This lease and the demised premises are expressly subject to and bound by the covenants and restrictions applicable to property on the said Island dated February 10,1949, and recorded in Deed Book 294, at Page 303 of the records of said County; and the said covenants and restrictions are made a part hereof, as if fully set forth herein.

(9) The lessee, if required by the Authority, shall exclusively use, at such reasonable rates or charges as may be fixed or approved by the Authority from time to time, such public utilities and public services relating to health and sanitation,

as shall be made available from time to time by the Authority or by others under agreement with or license or permit from the Authority, including without limitation the following: electricity, gas, water, telephone and telegraph, sewerage and garbage collection or disposal. The reasonableness of rates fixed by the Authority shall always be subject to judicial review.

(10) Lessee further covenants and agrees as follows:

(a) To pay on behalf of the Authority, or to reimburse the Authority for all sums which the Authority shall become legally obligated to pay as damages arising from or growing out of any act or neglect of the lessee or its contractors, agents or servants in connection with any and all covenants, agreements, operations, undertakings, and doings on the demised premises or under this lease or any other agreement between the lessee and the Authority, and to reimburse the Authority for all expenses that may be incurred in investigating or resisting any claim that the Authority becomes legally obligated to pay as the result of such a judgment.

The Authority shall promptly notify lessee of the institution of any suit that the Authority deems to be covered by this provision and shall permit lessee at its option to participate in the defense thereof; and lessee agrees to cooperate in the investigation and defense of any such suits.

(b) Not to use or occupy the demised premises for any purpose other than herein specified, nor permit the same or any part thereof to be used or occupied for any purpose or business other than herein specified, without the prior written consent of the Authority.

(c) Not to knowingly permit or suffer any nuisances or illegal operations or course of conduct of any kind on the demised premises.

(d) To furnish the Authority, not later than the twentieth day of each month, daily reports sufficiently detailed to reveal accurately and completely total revenue derived by lessee from every source each day during the preceding calendar month from any business conducted on or connected with the demised premises; and, from time to time, to furnish any other information which may be requested by the Authority in connection with this lease.

(e) To record all sales as made on a cash register acceptable to the Authority. Each cash register in use shall carry a tape on which each sale will be recorded. These tapes, showing the total of the days business, shall be a part of the monthly report submitted to the Authority by the lessee. After the tapes have been audited by the Authority's accountants they shall be returned to the lessee within a reasonable time. When approved by the Authority some other method of recording sales may be used in lieu of a cash register.

(f) To maintain accurate and adequate records and books of account which shall be open to inspection and audit by the Authority at reasonable times and places.

(g) To permit representatives of the Authority to enter the demised premises at reasonable hours to examine the same and to inspect all operations of lessee in order to ascertain whether the terms of this lease are being complied with by the lessee.

(h) To charge and receive for merchandise and rentals and for other sales, services and accommodations prices comparable to the charges at other Gulf beach resorts in Florida west of the Apalachicola River and elsewhere on the Island. The reasonableness of lessee's charges shall be subject to review by the Authority and lessee shall adjust its charges from time to time as may be required by the Authority, provided any changes ordered by the Authority are consistent with like charges for similar accommodations and services at such other resorts and elsewhere on the Island.

(i) To offer for rent to the public all rental units on the demised premises throughout the period from May 15th to August 31st in each year.

(j) To operate and conduct all businesses on the demised premises in a first class manner consistent with the public purpose to be served by Santa Rosa Island Authority and in the best interest of the public.

(k) To pay all costs, expenses and charges, including reasonable attorneys' fees, incurred in any proceedings begun or had to enforce the provisions of this lease, to collect any sums falling due hereunder, or for the termination of this lease.

(l) The Authority may immediately terminate and cancel this lease if the lessee shall become insolvent or bankrupt, or shall make an assignment for the benefit of creditors.

(11) The Authority further covenants and agrees that if the lessee shall pay the rent as herein provided and shall keep, observe and perform all of the other covenants of this lease to be kept, observed and performed by the lessee,

the lessee shall peacefully and quietly have, hold and enjoy the said premises, for the term aforesaid.

(12) In case any portion of the rental is not paid on or before the time of payment herein fixed, or in case the lessee shall default in the performance or breach any of the other covenants; conditions, terms and provisions of this lease and shall continue in such non-payment, default or breach after thirty (30) days notice in writing from the Authority, the Authority, in any such event, may declare this lease terminated and may take possession of the demised premises and all the improvements thereon, and this lease shall be at an end in the same manner and with the same effect as if the original term of the lease had expired. All rentals shall bear interest at the rate of 6% per annum from their due date. In event the Authority gives the above mentioned 30 day written notice of non-payment of rent the lessee shall be required to pay a late penalty of 5% of, and in addition to, the rentals and interest otherwise due, and if the delinquent rentals and interest be paid after the expiration of said 30 days and before the termination of the lease the lessee shall pay a penalty of 10% of the amount due. If suit is filed by the Authority to enforce any of the provisions of this lease, or to terminate it, lessee shall be required to pay a reasonable attorney's fee to the Authority's attorney and all costs of suit as a part of the consideration for any agreement for the continuance or re-instatement of this lease. In consideration of the substantial investment to be made by lessee in improvements on the demised premises the Authority agrees that lessee shall not be liable for any rent for the unexpired portion of the original term of ninety-nine (99) years of this lease in event of any default by lessee or lessee's voluntary surrender of the demised premises to the Authority.

(13) Upon the expiration or sooner termination of this lease, lessee shall be allowed a period of fifteen (15) days in which to remove all of its personal property, including furnishings, and lessee shall surrender possession of the land and

improvements in as good state and condition as reasonable use and wear will permit.

(14) No failure, or successive failures, on the part of the Authority to enforce any covenant or agreement, or no waiver, or successive waivers on its part of any condition, agreement, covenant or provision herein shall operate as a discharge thereof or render the same invalid, or impair the right of the Authority to enforce the same in event of any subsequent breach or breaches. The acceptance of rent by the Authority shall not be deemed a waiver by it of any earlier breach by the lessee, except as to such covenants and conditions as may relate to the rent so accepted.

(15) Each and all of the provisions, agreements, covenants and conditions of this lease shall extend to, and shall bind and be obligatory upon, or insure to the benefit of, the successors, sublessees and assigns of the parties.

IN WITNESS WHEREOF, this instrument is executed in duplicate this 30th day of December, 1968.

SANTA ROSA ISLAND
AUTHORITY

BY: s/ D. M. Harvey (SEAL)
Chairman

ATTEST:
S/ J. M. Kirschmeyer
Secretary

Signed, sealed and delivered in the presence
of as to Santa Rosa Island Authority:

s/ John G. Cowley
s/ Theodore N. Davis

s/ Jerry J. Babin
Jerry J. Babin

ATTEST:
s/ R. E. Mertins
Secretary

AFCO., INC.

As to Lessees:
s/ Golda Harrison
s/ Jack B. Yancey

s/ C. P. Woodbury (SEAL)
President

EXHIBIT D

Deed 294 Page 303

GENERAL COVENANTS AND RESTRICTIONS

Santa Rosa Island Authority as an agency of Escambia County, Florida, does hereby declare that, except as herein provided or permitted, the following covenants and restrictions shall apply to all property on Santa Rosa Island and that all leases or permits for the use of any part or parts of said island shall be subject to the said covenants and restrictions, to-wit:

A. Health, Sanitation and Cleanliness

(1) There shall not be erected, constructed, suffered, permitted, committed, maintained, used or operated on any part of the island any nuisance of any kind or character, or any illegal, offensive or obnoxious trade, business or operations of any kind.

(2) Each lessee shall keep all improvements on the demised premises in good repair, property painted and clean and sanitary at all times; and shall also keep the demised premises free from trash, debris and obstructions. Each lessee shall also keep all surrounding areas, including streets, beaches and neighboring lots, free from trash, debris and obstructions that may be due to the lessee's use or occupancy of the demised premises.

(3) No sewage, wastes, trash or debris shall be emptied or discharged into any lagoon, lake or canal or into the waters of Santa Rosa Sound or the Gulf of Mexico or any tributaries thereof.

(4) Pending the availability of sanitary sewers, the lessee or user of each lot or parcel shall construct a septic tank

sewage system with adequate leech lines which must have a by-pass for grease and oil from the kitchen and garage before entering the septic tank, the construction of which shall be in accordance with law and the rules and regulations of the public authorities having jurisdiction of the same, and the regulations of the Authority.

(5) Lessee shall be bound by and shall strictly observe all rules and regulations established or to be established by the Authority, the State Board of Health and any other governmental authority or agency relating to health, sanitation, safety and the public welfare.

B. Buildings and Other Improvements

(6) No building, fence, wall, walk, driveway, roadway, parking area, pier, dock, sea-wall or other structure shall be

commenced, erected or maintained, nor shall any addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials, floor plans, type of foundation, structural design, color scheme and location of such structure or work to be done, and the grading and planting plan of the plot to be built upon, shall have been submitted to and approved in writing by the Authority and a copy thereof as finally approved filed permanently with the Authority. The Authority shall have the right to refuse to approve any such plans and specifications or grading or planting plan which may not be suitable or desirable in its opinion for aesthetic or other reasons; and in so passing upon such plans and specifications or grading or planting plan may take into consideration the suitability of the proposed building or other structure or planting or grading plan and of the materials to be used in the construction or on the site and the harmony thereof with the surroundings and the effect of the building or other structures, planting or

grading on the outlook from the adjacent or neighboring property and on the appearance and development of the Island as a whole.

(7) All buildings, structures and improvements of every kind erected or maintained and all alterations and additions thereof on the Island shall conform to the provisions of the official building code of the Authority as promulgated, amended, altered or revised by it from time to time. The said building code shall be on file at the principal office of the Authority and open to public examination during the usual business hours of the Authority. A building permit issued by the Authority shall be effective for the period of time stated therein and, if construction is commenced within such period, any changes in the building code or zoning regulations subsequent to the date of the permit shall not apply to the work or construction authorized in such permit without the consent of the holder thereof.

(8) No building, or part thereof, shall be erected or maintained on any lot or parcel closer to any street or waterfront line than is shown on the then official plat of the Authority as the "front building line," nor closer to the rear lot line than is shown on said plat by the "building line." Wherever "front building line" appears designated on said plat it shall be taken to designate the front of the lot and all buildings shall front in that direction. No building or structure shall be erected closer to side lot lines, side street lines or other buildings than the required minimum distance that may be prescribed upon said official plat. The Authority in all cases, in event of ambiguity, absence of building lines from

its official plat or conflict between the plat and any written instrument, shall have the right to determine and designate the building line and the location of buildings necessary to conform to the general plan of development, and the Author-

ity's judgment and determination shall be final and binding.

(9) No docks, piers, buildings or structures of any kind whatever shall be erected, constructed or permitted on any beach or below the high water line on the shore of Santa Rosa Sound or the Gulf of Mexico or any other body of water without the prior written approval of the Authority.

(10) No well shall be sunk without the prior consent in writing of the Authority.

C. Reservations of Easements

(11) An easement and right-of-way is hereby expressly reserved in, on, under and over a strip five feet in width along the side and rear lines of all lots for the erection, construction and maintenance of poles and wires and clearing of trees and pruning of branches, and for the construction and maintenance of underground pipes and conduits and of all proper and necessary attachments for electric light, power and telephone service and for the construction and maintenance of storm water drains, land drains, sanitary sewers, pipe lines for supplying gas and water and for the construction and maintenance of any other public or quasi-public utility. The Authority shall have the right to enter and to permit others to enter upon said reserved strips of land for any of the purposes for which said easements and rights-of-way are reserved. This easement and right-of-way shall not apply to such portions of the areas mentioned as to which the Authority shall have consented in writing to a conflicting use.

D. Miscellaneous Regulations

(12) *Unsightly vacant property.* The Authority reserves the right to care for vacant and unimproved lots or parcels notwithstanding any lease or permits for the use thereof, and to remove and destroy any undesirable growths or unsightly

and obnoxious thing therefrom, and to do any other things and to perform any other labor necessary or desirable in the judgment of the Authority to keep any lot or parcel and the land contiguous and adjacent thereto neat and in good order, and charge the same against the lessee of such lot or parcel. In order for any expense incurred by the Authority hereunder to be charged against any lessee such lessee must have

been notified in writing by the Authority to do the work specified in such notice at his own expense at least thirty (30) days prior to the doing of the work by the Authority.

(13) *Signs.* No sign of any character shall be erected, pasted, posted or displayed upon or about any lot or parcel or anywhere on the island without the written permission of the Authority and the Authority shall have the right of uncontrolled discretion to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Standard advertising signs for various types of commercial lessees will be prescribed.

(14) *Off street parking.* Each lessee shall provide off the street parking areas on his leased lot or parcel for his own vehicles and commercial lessees shall in addition provide off the street parking areas for employees to the extent that the Authority may from time to time reasonably require.

(15) *Commercial deliveries.* The Authority expressly reserves the right to restrict the time for deliveries by commercial trucks or otherwise of supplies, merchandise and services to such reasonable hours as shall least interfere with other traffic to and from and on the Island. Emergency deliveries at different hours may be permitted by an authorized agent of the Authority.

(16) *Identification of Employees.* The Authority in its discretion may from time to time require such persons as it may direct who are employed in commercial establishments on the Island, including operators and managers, to wear or carry such badges, cards or other identification as may be prescribed by the Authority.

(17) *Pets and Animals.* No live stock, animals, chickens or fowl of any kind shall be permitted at large upon the Island. Dogs and cats owned as personal pets will not be permitted on the beaches at all and will be permitted elsewhere on the Island only when leashed or muzzled.

(18) *Temporary Structures.* Tents, trailers, houseboats or temporary structures of any kind will not be permitted upon the Island or the waters adjacent thereto, except that trailers or temporary camps may be authorized in areas expressly set aside by the Authority for such use.

E. Right to Prescribe Other Restrictions, Zoning, Etc.

(19) The Authority expressly reserves the right to classify

and re-classify from time to time areas for zoning purposes and to prescribe, amend or revoke regulations and restrictions applicable to such areas and buildings and structures therein and the uses thereof, but no such classification, regulations, or restrictions shall apply to any portion of the Island then under lease without the consent of the lessee thereof.

(20) Notwithstanding the filing of record of any plat by the Authority of any portion or portions of the Island,the Authority nevertheless reserves unto itself the following:

(a) The right to restrict the use of streets, parks, beaches,

and other public areas in residential sections to the residents in such sections and their guests.

(b) The sole right to control and consent to the use of any street, road, park or other easement for public street transportation purposes.

(c) The right to vacate, modify or alter any such plat in whole or in part or parts, provided that the location and size of any lot or parcel then under lease shall not be altered with out the written consent of the lessee, nor shall access to the said lot from the main road leading to the nearest bridge across Santa Rosa Sound or access to and from the nearest beach be impaired without the written consent of the lessee.

(21) The Authority, notwithstanding the terms and provisions contained in this instrument, hereby expressly reserves the right, in its absolute discretion, at any time to annul, waive, change or modify any of the covenants and restrictions herein contained as to any lot, parcel or part of said island not then under lease and, with the written consent of the majority in number of the lessees of the lots in any area designated by the Authority, as to the lots or parcels in such designated area.

(22) Notwithstanding the designation on official plats of areas as business, commercial, residential, recreational and the like, the Authority expressly reserves the right to permit within any of such areas the use of lots or parcels for schools, churches, libraries, art galleries, museums and other religious, civic or cultural purposes.

F. Penalties and Remedies.

(23) If any lessee or occupant of any lot or parcel shall violate or attempt to violate any of the restrictions and covenants applicable to such lot, it shall be lawful for the Authority or any person or persons leading property on the Island

to prosecute proceedings in law for the recovery of damages against the person or persons so violating or attempting to violate any such covenants and restrictions; or to maintain a proceeding in equity for the purpose of restraining or preventing such violation; provided, however, that the remedies herein stated shall be construed as cumulative of all other remedies now or hereafter provided by law; and, provided further, that the violation of any such restrictions or covenants shall as to the Authority be construed as a breach of the lease of the person committing or permitting such violation.

IN WITNESS WHEREOF, the said Santa Rosa Island Authority has caused this instrument to be signed by its chairman, attested by its secretary, and the seal of the Authority to be affixed hereto, this 10th day of February, 1949.

SANTA ROSA ISLAND
AUTHORITY

SEAL BY s/ J. H. Sherrill
Chairman

ATTEST:
s/ Carl T. Johnson
Secretary

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Before me, the undersigned Notary Public, personally appeared J.H. Sherrill, well known to me and known to me to be the Chairman of Santa Rosa Island Authority, and acknowledged that he executed the foregoing instrument for and in the name of said Authority, as its chairman, and caused its seal to be thereto affixed, pursuant to due and legal

action of said Authority authorizing him so to do.

WITNESS my hand and official seal this 10th day of February, 1949.

s/ Judy King
Notary Public

SEAL

My commission expires 6/22/52

No. 4065 Filed FEB 10 1949
at 3:39 o'clock P.M. recorded in the Public Records of Escambia County, Florida, in the Book and Page noted above.

LANGLEY BELL Clerk Circuit Court
By s/ Faye Mayes
Deputy Clerk

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DUNES MOTEL, INC., a Florida corporation

Plaintiff,

-vs- CASE NO. 75-297-A

JOHN R. JONES, as County Appraiser of Escambia County, Florida, et al.,

Defendants

JOE E. BARNES, as Trustee for Island View Development Corporation, a Florida Corporation, Filed 5/14/75

Plaintiff,

-vs- CASE NO. 75-544-A

JOHN R. JONES, as County Appraiser of Escambia County, Florida, et al.,

Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These two cases have been consolidated by stipulation of counsel. The Court's judgment herein will affect these two consolidated cases as well as the cases of some 23 intervenors. Therefore, the term "plaintiffs" wherever hereinafter used shall be deemed to include these two specifically named plaintiffs as well as such intervenors, unless otherwise designated;

Dunes Motel, Inc., shall hereafter be referred to when necessary to separate it from the other plaintiff and intervenors as *Dunes*, and Joe E. Barnes, as Trustee for Island View Development Corporation, when so thought necessary, as *Barnes*.

FINDINGS OF FACT

1. *Dunes* filed its complaint and an amendment thereto and the defendants filed a motion to dismiss the same, as amended. This suit challenges the levy for 1974 of taxes on a leasehold interest under which a hotel and restaurant is operated on Santa Rosa Island under a lease from the Santa Rosa Island Authority, and proposed assessments thereon for the tax years of 1972 and 1973;

2. *Barnes* filed a complaint and amendment thereto and the defendants filed a motion to dismiss the same, as amended. Barnes owns a leasehold interest from the Santa Rosa Island Authority under which a campground with 400 campsites are operated. He makes the same challenges to the levy and assessment of taxes and proposed assessments as *Dunes*;

3. The plaintiffs are holders of 99 year leases from said Santa Rosa Island Authority;

4. All property so leased is owned by Escambia County, Florida, and is located on Santa Rosa Island;

5. All leases herein involved are dated prior to December 31, 1971;

6. The tax years involved are 1972, 1973 and 1974;

7. Taxes have been assessed on all of the leaseholds involved for those three years by the defendant, County Appraiser, pursuant to Section 196.199(6), and Section 196.001, Florida Statutes;

8. Plaintiffs have paid the maximum amount of taxes which they admit in good faith to be due for the said tax years, payments being based on the premise that such leasehold interests were intangible personal property;

9. The facts setting forth the acquisition by Escambia County of that portion of Santa Rosa Island involved in these suits from the United States of America in 1947, the purposes for which the conveyance was made to the County by the United States, the authorization by the Legislature of Florida to the Board of County Commissioners of the use of said property on the Island, the powers granted to said Board by the Legislature, including the delegation of such powers to a special board or authority known as the Santa Rosa Island Authority, the exemption by the Legislature of said property and leases therein from all ad valorem taxes, the uses to which said property has been put prior to December 31, 1971, both by the County and Authority and leaseholders, and the repeal of such tax exemption by the Legislature through the enactment of Chapter 71-133, Laws of Florida of 1971, effective December 31, 1971, are all set forth in detail by this Court's opinion and judgment in the case of Camp v. Jones, et al., decided on May 19, 1972, and delineated by the Supreme Court of Florida in its reversal of this Court's judgment by judgment and opinion in the case of Straughn v. Camp, et al., decided March 7, 1974, and reported in 293 So. 2d at Page 689. No further statement by this Court is necessary for the determination of the issues raised by the complaints herein and the motions of the defendants to dismiss. The reader may refer to such judgments and opinions for a recital of such facts.

CONCLUSIONS OF LAW

The complaint and motions to dismiss raise five legal questions. They are (1) that the plaintiffs have not exhausted administrative remedies before filing suit, (2) that the repeal of the tax exemption as it applies to leases acquired

prior to December 31, 1971, is ineffective as to such leases because such exemption repeal is an impairment of contract obligations, (3) that if it be held that such repeal is not void as to these leases, then whether such lease should be taxed as intangible personal property or as interests in real property (4) if held to be intangible personal property, whether the 1968 Constitution of Florida has not placed the sole power to tax such intangible personal property in the State of Florida and denied it to local governmental entities, and (5) whether Sections 196.001(2), 196.199(6) and 196.199(7) violate the equal protection clause of the Florida Constitution and the 14th Amendment of the Constitution of the United States.

We shall treat these questions in order as above listed.

1. As to question #1, we hold that the plaintiffs are not required to exhaust administrative remedies before filing suit for the reason that they allege that the assessments and levy of taxes complained of are illegal and invalid because authorized under statutes unconstitutional in their application to the leases involved. Under such circumstance the taxpayer is not obligated to appeal the assessment to the County Board of Adjustment because that Board has no authority to pass upon the validity or constitutionality of a tax statute. Roberts v. American National Bank, 97 Fla. 411, 121 So. 554; Overstreet v. Ty-Tan, Inc., 48 So. 2d 158; St. Joe Paper Company v. Ray, 172 So.2d 646; Hackney v. McKenney, 151 So. 524; Lake Worth Towers, Inc. v. Gerstung, 262 So. 2d 1; also this Court's order of February 14, 1973, denying motion to dismiss in the case of Air Products, etc. v. Fisher, et al., affirmed by the DCA (1st), January 8, 1975, reported 306 So. 2d 572.

2. The plaintiffs allege that to permit the taxation of their leasehold interests acquired prior to the effective date of Chapter 71-133 would amount to impairment of obligations of contract in violation of Article I, Section 10 of the Con-

stitution of the United States. This contention is without validity for the Supreme Court of Florida in *Straughn v. Camp*, supra, has laid this question to rest. There the Supreme Court held that the imposition of ad valorem taxation on leasehold interests do not impair an obligation of contract and that "there was no binding obligation on the part of the County or the Authority or the State, nor could there have been one constitutionally entered into by any of them, that never in the future could the legislature impose an ad valorem tax on plaintiffs' leasehold interests." And speaking of the repeal of the tax exemption enjoyed by the leaseholders prior to the enactment of Chapter 71-133, the Supreme Court held:

> It is well established that one legislature cannot bind its successors with respect to the exercise of taxing power, and that contract rights are ordinarily not beyond the taxing power but are generally subject thereto. Vol. 16 C.J.S. Constitutional Law Section 284, P. 1294, Wisconsin and Michigan Railway Co. vs Powers, 191 U.S. 379, 48 L.Ed. 229; Pennsylvania Railroad Company, et al vs State of New York, 230 N.Y.S. 2nd 1004 (CA 1962)."

Certiorari to the Supreme Court of the United States was denied (42 L.Ed. 2nd 13)

It is true that these plaintiffs were not parties to that suit, but the legal issue herein is the same as therein and this Court is bound by the precedent therein established. In view of this holding by the highest court of appeal of this state we must conclude that this contention of plaintiffs is not well-founded and is without merit.

3. Next the plaintiffs contend that the leaseholds in question should be taxed as intangible personal property and not as an interest in real property. This contention is likewise

without merit. The Supreme Court of Florida in the case of *Park-N-Shop v. Sparkman*, Fla. 99 So. 2d 571, expressly rejected this contention after analyzing both Chapter 200, Florida Statutes, which dealt with personal property and Chapter 199, F.S., which dealt with intangible personal property. Therein the Court expressly held that the leases involved therein were *neither* tangible nor intangible personal property. Although the statute under consideration at that time was not the same as it is today, the definition of intangible personal property as embracing ". . .all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents. . ' is unchanged.

The plaintiffs have cited numerous cases which recite the common law rule that a leasehold is a chattel real. However, this common law rule was implicitly rejected by the Supreme Court in the *Park-N-Shop* case, supra, insofar as taxation was concerned and regardless, there is no question but that the legislature has the power to define and tax each specific interest in real estate. In fact, the case of Hillsborough Aviation Authority v. Walden, 210 So. 2d 193, expressly held that such leases were real estate.

That the legislature has done so is beyond question. Section 196.001, F.S. commands that all real personal property in this state and all personal property belonging to persons residing in this state, and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority or any public body corporate of the state, shall be subject to taxation. Such leasehold interests are considered in Section 196.199, Florida Statutes, wherein it is pointed out that such leaseholds in property of the previously-mentioned public entities shall be exempt from *ad valorem taxation only* when the lessee serves or performs a governmental, municipal or public purpose or function as provided in Sections 196.012(5) and 196.199(2)(a), Florida Statutes.

The *Straughn v. Camp* case, supra, overturned this Court's decision which had concluded that the appellee taxpayers involved therein were performing a proper public purpose within the provisions of Chapter 24500, Chapter 25810 and Chapter 71-133, supra, (see pages 693 and 694 thereof).

Accordingly, the leaseholds in question are not intangible personal property and should be taxed as an interest in real property. That each and every interest in real property may be subjected to tax is beyond question *See, Dickinson v. Davis,* 224 So. 2d 262, and the admonitions to the legislature contained in the *Walden* and *Park-N-Shop* cases, supra.)

Plaintiffs further contend that Article VII, Section 4, Florida Constitution, prohibit the legislature from enacting the laws in question requiring taxation of their leasehold interests. Said article speaks to classification of property for purposes of valuing the property or taxing it because of its use or character or at a specified percentage of its value. The statutes in question do not attempt to deviate from the concept of just value insofar as taxation of the plaintiffs' leaseholds is concerned. Accordingly, no violation of Article VII, Section 4, supra, exists, and the plaintiffs' reliance on the case of *Interlachen Lakes Estates, Inc. and Norservice, Inc. v. Snyder,* 304 So. 433, is misplaced. That case dealt with Section 195.062(1), Florida Statutes, and the contention that the effect of that law was to *value* certain property at a percentage of its just value or at some deviation from just value. The Court was quite clear on this point when it stated, after discussing the article," . .that by clear implication no *separate standards for valuation* may be established for any other clases of property." (emphasis supplied). The statutes in question do not attempt to value leaseholds or any other basis except that of just value. Section 193.011 is equally applicable to the valuation of the leasehold interests involved. By the same reasoning Article VII, Section 2, of the Florida Constitution, is not violated.

4. Having held that the leasehold interests of the plaintiffs are taxable as interests in real property and not as intangible personal property it is immaterial that the state has preempted the field of taxation of intangible personal property and thereby denied that field to local political entities.

5. Next the taxpayers argue that Section 196.001(2), Section 196.199(6), and Section 196.199(7) violate the equal protection clause of the Florida Constitution and the 14th Amendment of the U.S. Constitution. Here the taxpayers contendthat the violation of equal protection occurs because individuals holding leases from governmental entities are required to pay taxes on such leaseholds while individuals holding leases from private property owners are not taxed on their leaseholds. Taxpayers further argue under this ground that there is no rational basis for taxing leases for periods of 99 years or more as if the lessee owned the property, while leases of a shorter duration would not be so taxed.

Both contentions must be rejected. The case of *Just Valuation Taxation League Inc. v. Simpson,* Fla 209 So. 2d 229, and the U.S. Supreme Court authorities cited therein compel a rejection of this contention. Equal protection does not require identity of treatment, but only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification as to be wholly arbitrary. (*Frank Walters v. City of St. Louis,* 347 U.S. 231, 98 L.Ed. 660, 74, S.Ct. 505). The power of the state to classify for purposes of taxation is broad. (id.) The presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes, the burden being on the one attacking the legislative arrangement to negate every conceivable basis which might support it. (id.) If the selection or classification is neither capricious nor arbitrary and rests upon some

reasonable consideration of difference or policy there is no denial of the equal protection of the law, and the fact that a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a *reasonable distinction* or difference in state policy. (*Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 2 L. Ed 2nd 480).

The differences or distinctions were real. The tax scheme is designed for equitable distribution of the tax burden by requiring all leaseholders whether government or private to bear the impact and burden of property taxes either directly or indirectly. Here the tax scheme produces equality of treatment and eliminates discrimination and inequity. All persons using property for private purposes, whether such property is government owned or privately owned, are required to bear a tax burden in the form of an ad valorem property tax. This is entirely consistent with Florida's scheme of taxation whereby the *use* of property is the yardstick by which the tax or exempt status of property is determined. Were it not for the statutes under attack, private persons would be placed in a competitively advantageous position through leasing government-owned property compared to other private persons leasing and using the same type property from private persons for the same purposes. Thus, there are ample reasonable reasons for taxing governmental leaseholds held by private persons and not taxing private leaseholds held by private persons. In both instances the property, when used for a private purpose, is required to be taxed either directly on the property or on the leasehold. This produces equality and achieves an equitable distribution of the tax burden.

By the same reasoning, the legislative determination that leases for a period of 99 years and longer should be taxed as if the property were owned by the leaseholder is valid. The 99 year lease period is the most common in real estate custom and undoubtedly the Legislature had knowledge of the terms of the leases on Santa Rosa Island. Additionally,

the Constitution itself uses the 99 year period in the homestead exemption provision found in Article VII, Section 6, Florida Constitution, as does Section 196.041, Florida Statutes. Therein homestead exemption is granted to persons holding leaseholds initially in excess of 98 years. Accordingly, it is only logical that the legislature should choose the 99 year period to equate with ownership. All leases of a shorter duration would be taxed pursuant to the criteria found in Section 193.011, Florida Statutes.

To like effect see *Slaughter v. Department of Commerce Division of Labor,* et al., 252 So. 2d 839, wherein the Court relied on the case of *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 57 S.Ct. 868, 81 L.Ed. 1245, which had held that inequality which results from a singling out of one particular class for taxation or exemption infringes no constitutional limitation. The case of *Gaulden v. Kirk*, 47 So. 2d 567, likewise supports this rule.

Lastly, plaintiffs argue that the operation of their respective establishments performs a governmental or public purpose as defined in Section 196.012(5), Florida Statutes, and is, therefore, exempt under Section 196.199(2)(a), Florida Statutes.

The plaintiffs operate a campground, a motel and restaurant, a plumbing business, beauty shops, laundries, barber shop, rental cottages and units, motels and boat dock facilities.

Suffice it to say that the operation of none of such businesses would meet the requirements of Section 196.012(5), Florida Statutes, and Section 196.199(2)(a); Florida Statutes. It would be difficult to perceive how a beauty shop or barber shop would be performing a governmental or public purpose. If such were the case, then all beauty shops and barber shops in the state of Florida could argue that by being located in an area which caters to tourists such would enjoy a

tax exempt status. Inasmuch as Florida's economy is based on tourism to a great extent, any business designed to cater to such tourists and to offer them services would be able to qualify for tax exempt status if the plaintiffs' contentions were correct.

The same is true of the motels, hotels, restaurants, boat dock facilities, campgrounds and rental cottages. There is no perceivable difference between such a commercial use of property at Panama City Beach and Pensacola Beach or any beach on Santa Rosa Island. The fact that most persons staying at the various hotels and motels on the island are from outside Escambia County is of no conquence. People who live in a county stay in their homes not in a motel or hotel. The same would be true of all motels, or hotels or places having housing accommodations any place in the state of Florida.

The predominant use of the commercial establishments involved is purely private as opposed to governmental.

Plaintiffs contend that Section 196.199(7), Florida Statutes, discriminates against them because it provides that the taxes levied against their leasehold interests shall not become a lien on the property itself, but shall constitute a debt due recoverable by legal action, or by the issuance of tax executions that shall become liens upon any other property of theirs located in any county of the state; and because nonpayment of any such taxes shall result in the revocation of any occupational license held by them, or the revocation of the corporate charter of a corporate plaintiff leaseholder, when such license or charter is related to the leased property. Here again we find no unconstitutional discrimination nor denial of equal protection of the law. The fee title to all the properties in question is in Escambia County and to limit the County's remedy to a lien upon its own property would amount to no remedy at all. And certainly the fact that the statute exempts the leasehold interest of the leaseholder

from sale gives the plaintiffs no cause to complain. Nor does the fact that instead of such remedy the plaintiffs' occupational licenses or charters which are related to operations upon the leased properties may be revoked establish discrimination and denial of equality of the law. All persons falling within the class of property owners as are the plaintiffs are treated alike insofar as enforcement remedies are concerned. The fact that the same remedies may not be had as against other taxpayers who are not holders of leased property upon government owned fees does not amount to discrimination against these plaintiffs within the meaning of constitutional prohibitions against denial of equal protection of the law.

The manner of securing taxes authorized by the legislature to be levied is purely a legislative matter not to be disturbed by the courts. This procedure for collection and enforcement is entirely consistent with the nature of the leasehold property being taxed, and is exclusively a matter for determination resting within the legislative power. There is nothing in the state or federal Constitutions to prohibit the legislature from making taxpayers liable personally for taxes imposed by statutory enactment. 31 Fla. Jur., Taxation, Section 376, Page 459; Lee v. Atlantic Coast Line R. Co., 194 So. 252. From payment of taxes is essential to effective government and it is within the province of the legislative department to provide any and all adequate means to enforce the payment of taxes. 31 Fla. Jur., Taxation, Section 395, Page 476.

By way of summary we hold:

1. That the plaintiffs were not required to exhaust administrative remedies as a condition precedent to instituting this suit;

2. That the repeal of the tax exemption as it applies to leasehold interests in property owned by Escambia County

on Santa Rosa Island did not amount to an impairment of contract obligation which is prohibited by Article I, Section 10, of the United States Constitution;

(3) That such leasehold interests are taxable as interests in real property and not as intangible personalty;

4. That the fact that the Constitution and statutes of Florida places the sole power to tax intangible personal property in the state and deprives local governmental entities to do so is immaterial because of our holding that these leasehold interests are not personal property, and

5. That the statutes of Florida which empower the County of Escambia to tax these leasehold interests and provide enforcement remedies for the collection of such tax do not violate the equal protection clause of the Florida Constitution nor the 14th Amendment of the Constitution of the United States.

Accordingly, we hold that real property ad valorem taxes are due and owing by the plaintiffs on their leaseholds for the tax years of 1972, 1973 and 1974, and that defendants' motion to dismiss the complaints, as amended, should be sustained and granted.

IT IS SO ORDERED, with leave to the plaintiffs to further amend within 10 days, if they be so advised.

In the event the plaintiffs elect not to amend further, or fail to so amend within said time, judgments will be entered for defendants and those funds which have previously been paid to the Tax Collector of Escambia County and which have by stipulation been impounded shall, upon the entry of final judgments herein, be released by such Tax Collector as provided by law.

If final judgments are entered in accordance herewith the

plaintiffs shall have 30 days from the entry of said judgments to pay the taxes due and unpaid for said tax years, failing which, the Tax Collector may proceed to take such steps for the collection of said taxes as is provided by law, and the injunctions previously entered herein shall be dissolved.

Upon the entry of such final judgments each party hereto shall bear his or its own costs.

Final judgments, if no further amended complaints are filed herein, shall be prepared by defendants' counsel and shall incorporate the findings herein made.

DONE AND ORDERED at Pensacola, Florida, this 13th day of May, 1975.

Copies to:

J. McHenry Jones, Esquire
J. B. Hopkins, Esquire
Bert H. Lane, Esquire
Jack H. Greenhut, Esquire
Gerald L. Brown, Esquire
Larry Levy, Esquire

s/ Ernest E. Mason
CIRCUIT JUDGE

ORDER OF COURT

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DUNES MOTEL, INC., a Florida corporation,

Plaintiff CASE NO. 75-297-A

vs.

JOHN R. JONES, as County Appraiser of Escambia County, Florida, et al.,

Defendants

-- ---------- Filed 5/15/75

JOE E. BARNES, as Trustee for Island View Development Corporation, a Florida Corporation,

Plaintiff CASE NO. 75-544-A

vs.

JOHN R. JONES, as County Appraiser of Escambia County, Florida, et al.,

Defendants

ORDER

This cause coming on to be heard upon motion to amend the first, second and last paragraphs of the interlocutory order entered in the above cause on May 13, 1975, and the

Court being advised in the premises and of its opinion, it is therefore,

ORDERED AND ADJUDGED that the first and second paragraphs of the interlocutory order of May 13, 1975, appearing on page 12 of Findings of Fact and Conclusions of Law, be and the same are hereby amended to read as follows:

"IT IS SO ORDERED, that the motion to dismiss the complaint, as amended, be and the same is hereby granted, with leave to the plaintiffs to further amend said complaint within 10 days, if they be so advised.

In event the plaintiffs elect not to amend further, or fail to take an appeal to this interlocutory order within said period, or fail to so amend within said time, judgments will be entered for defendants and those funds which have previously been paid to the Tax Collector of Escambia County and which have by stipulation been impounded shall, upon the entry of final judgments herein, be released by such Tax Collector as provided by law."

IT IS FURTHER ORDERED AND ADJUDGED that the last paragraph appearing on page 12 of the Findings of Fact and Conclusions of Law, be and the same is hereby amended to read as follows:

"Final judgments, if no further amended complaints are filed herein, or if no interlocutory appeal is taken, shall be prepared by the defendants' counsel and shall incorporate the findings herein made."

DONE, ORDERED AND ADJUDGED, at Pensacola, Florida, this 15 day of May, 1975.

s/ Ernest E. Mason
CIRCUIT JUDGE

IN THE SUPREME COURT OF FLORIDA
JULY TERM, 1975

MARY WILLIAMS, ET AL.,
Appellants,
vs. Case No. 47,434
JOHN R. JONES, ETC., ET AL.,
Appellees.

DUNES MOTEL, INC., ETC., ET AL.,
Appellants,
vs. Case No. 47,435
JOHN R. JONES, ETC., ET AL.,
Appellees

JOHN J. LERGENMILLER, JR., ET AL.,
Appellants,
vs. Case No. 47,436
JOHN R. JONES, ETC., ET AL.,
Appellees.

This matter is before us on direct appeal from the Circuit Court of the First Judicial Circuit in and for Escambia County, Florida. We have jurisdiction of the appeal pursuant to Article V, Section 3(b) (1), Florida Constitution, and Rule 2.1a.(5) (a), Florida Appellate Rules, in that the Circuit Court passed directly upon the validity of Sections 196.001 (2), 196.199(6) and 196.199(7), Florida Statutes, by holding that the county appraiser properly assessed certain leasehold interests of the appellants for the three years last past for taxation as real property pursuant to the cited sections. Appellants are lessees of county-owned property from the Santa Rosa Island Authority which was created by Chapter 24,500, Special Laws of Florida 1947. The circuit judge specifically held that Sections 196.001(2), 196.199(6) and

196.199(7) do not violate the equal protection clause of the Florida Constitution nor the Fourteenth Amendment of the Constitution of the United States. The sections of the Florida statute in question were enacted as a part of Chapter 71-133, Laws of Florida 1971, commonly referred to as the "tax reform act". It should be noted at the outset that notwithstanding the fact that the Division of Statutory Revision and Indexing placed the contents of Section 196.001 at that chapter of the Florida Statutes for 1971, Section 16 of Chapter 71-133, Laws of Florida 1971, provided that Chapter 192, Florida Statutes, was to be amended by adding such new section as Section 192.010. Whereas Chapter 196, Florida Statutes, is entitled "Exemption", Chapter 192, Florida Statutes, is entitled "Taxation, General Provisions".

The cases herein consolidated are representative of twenty-five cases filed in the court below wherein more than 300 taxpayers intervened.[1] The twenty-five cases were classed so as to embrace all the issues involved and allow for the differences and the particular status of taxpayers. Basically, the taxpayers are divided into classes of commercial and residential leaseholders. The commercial taxpayers are represented by enterprises such as the operation of barber shops, plumbing businesses, beauty shops, laundries, rental cottages or rental units, motels, restaurants and campgrounds. In addition to the constitutional points raised, such commercial taxpayers assert that the operation of their facilities constitutes a governmental or public purpose or function and, accordingly, such leaseholds are *exempt* from ad valorem taxation pursuant to Section 196.012(5), Florida Statutes. The main thrust of the appellants' arguments are: (i) that the leasehold interests are a category of personal property which

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1 Although the parties in their briefs assume all of the leaseholds involved in the litigation are for an initial term of 99 years, the record in Joe E. Barnes, etc. v. John R. Jones, etc., et al., reflects by Exhibit C attached to the Complaint that at least one of the leases is for an initial term of only 25 years.

at common law would be classified as a "chattel real" or form of intangible personal property and, therefore, must be taxed in accordance with the provisions of Chapter 199, Florida Statutes, dealing with taxation of intangible personal property exclusively by the state; (ii) that the taxation of the leasehold interests as real property violates the provisions of Article VII, Section 2 and Section 4, of the Florida Constitution, as being an unreasonable classification under the "just valuation" mandate of such Article and (iii) that the taxation of such leaseholds as real property violates the taxpayers' rights to equal protection under the Florida Constitution and the Fourteenth Amendment to the Constitution of the United States. The issues were framed by the appellees' Motions to Dismiss the several Amended Complaints of the appellants. After hearing upon the Motions to Dismiss the trial judge in entering his Order of Dismissal made extensive and well-reasoned findings of fact and conclusions of law.

The appellants, subsequent to the filing of the appellees' brief in this Court, moved to strike portions thereof relating to argument by appellees in response to an asserted attack by the appellants upon the statutes as constituting an impairment of contract rights of the appellants. Appellants contend that the issue was not raised below nor was it assigned as error. From our review of the record it appears clear that the issue was raised in the Complaints as amended and was addressed by the trial court. Be that as it may, whether the appellants concede the point or not, we deem that issue to have been disposed of adverse to the appellants by our opinion in *Straughn v. Camp*, 293 So. 2d 689 (Fla. 1974). Accordingly, the Motion to Strike of the appellants is denied.

This is the third occasion in which the taxable status of leaseholds on Santa Rosa Island has been before this Court. See *State v. Escambia County*, 52 So. 2d 125 (Fla. 1951), and *Straughn v. Camp, supra.* The factual background and legislative history concerning the special and general acts establishing the authority for development of Santa Rosa

Island and the tax treatment of leaseholders on the Island is aptly set forth in *Straughn v. Camp, sura,* and we deem it unnecessary to reiterate that background here.

The questions presented by the instant appeal essentially are: Does the Legislature have the power constitutionally to treat leasehold interests in public land such as are here involved as real property for ad valorem tax purposes and, secondly, has the Legislature done so through the enactment of the statutory provisions here under attack? We answer both propositions in the affirmative.

As to the power of the Legislature to so legislate, the words of Mr. Justice Terrell on rehearing in the case of *Bancroft Inv. Corporation v. City of Jacksonville, et al.*, 157 Fla. 846, 27 So. 2d 162 (1946), provide a guiding principle concerning the function of the Court in reviewing the exercise by the Legislature of its taxing power when he stated at page 170 of the opinion:

> "...We approach it on the premise that this is a democracy in which every parcel of property is expected to bear its due portion of the burden of government, unless exempted by the legislature in the manner provided by Section 1, Article IX of the Constitution. Courts have no more important function than to direct the current of the law in harmony with sound democratic theory."

In that case the Court, on rehearing, determined that the equitable interest of a purchaser of certain real property in Jacksonville, Florida, from the United States Government under an executory contract for sale was a sufficient interest in real estate to justify levy of ad valorem real estate taxes thereon.

Appellants' assertion that the classification of a leasehold

interest in public land as an interest in real estate violates the provisions of Section 2, Article VII, Constitution of Florida, is, we believe, untenable. That section merely provides that all ad valorem taxation shall be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property. The predecessor to Article VII, Section 2, was Article IX, Section 1, in the Constitution of 1885. That document required a "uniform and equal rate of taxation". The words "and equal" in the 1885 Constitution have been displaced in our current Constitution with the phrase "within each taxing unit". Such revision was simply for the sake of clarity. See commentary to Article VII, Section 2, Constitution of Florida, 26A F.S.A. Consequently, cases construing the former Article IX, Section 1, are relevant to an inquiry under Article VII, Section 2, of our present Constitution. In analyzing the restrictions upon the Legislature imposed by the former constitutional provision, this Court stated in *Hayes v. Walker,* 54 Fla. 163, 44 So. 747 (1907):

> "Classifications for purposes of legislation may be made with reference to similarity of situation, circumstances, requirements, and convenience to best subserve the public interest. The test as to the validity of classifications for purposes of legislation is good faith, not wisdom."

The rate of the tax imposed by Section 196.001(2), Florida Statutes, is uniform as to all leaseholds of public property enumerated therein. The section under consideration does not apply non-uniformly in one political subdivision of the State of Florida as opposed to another. In that it applies similarly to all under like conditions, it cannot be said that such classification is arbitrary, unreasonable or unjustly discriminating.

By the same token appellants' attack upon the Legislature's ability to so classify under Article VII, Section 4,

Florida Constitution, must fail. Article VII, Section 4, provides as follows:

> "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:
>
> "(a) Agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.
>
> "(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value."

The limitation imposed by the foregoing section was clearly intended to be a check upon the Legislature so as to prohibit it from classifying property for ad valorem taxation in such a manner as to result in a valuation of any class of property at *less than* just value, subject to the provisos of subsections (a) and (b). In short, the clear intent of the revisers of the Constitution was to prohibit the Legislature from making only those classifications which would result in some property being taxed at less than its just value, except for the categories enumerated in subsections (a) and (b). The classifications created by Section 196.001(2) and Section 196.199, Florida Statutes, result in the holders of leases of publicly owned lands bearing their fair share of the tax burden, thus placing them on a parity with other real property in the private sector devoted to similar uses. Certainly the statutes under consideration do not mandate that the taxpayers' leasehold interest be assessed at less than or a percentage of just value. This proposition has been recognized in the case of *Straughn v. Amoco Production Company,* 309 So.2d 39 (2nd D.C.A. Fla. 1975) where the court there had under consideration Section 193.481(1), Florida Statutes, relating to oil and mineral leases. There the court said:

> "The questions remain, however, whether the legislature can tax a leasehold interest as an estate in realty and, if so, whether it did so here. Ordinarily, leasehold interests in private real property are not amenable to ad valorem taxes. We are aware of no reason, however, why they cannot be if the legislature clearly so ordains and such classification is a reasonable one considering the purpose. Indeed, our Supreme Court expressly recognized oil and mineral leases as being exceptions to the general rule in Dade County v. Pan American World Airways,Inc." (Footnotes omitted)

The same conclusion was reached by this Court in the case of *Park-N-Shop, Inc., v. Sparkman,* 99 So.2d 571 (Fla. 1957), where the Court, confronted with the character of a commercial leasehold interest in property owned by Hillsborough County, determined that such an interest was neither tangible personal property nor intangible personal property, but concluded:

> "In our examination of the tax statutes we have not found provisions for the specific assessment of the lessees' interest and we have been referred to none, although we are not conscious of any reason why the legislature could not set up machinery for that purpose in situations such as that presented in this case, but we are satisfied that the interests of lessees are neither tangible nor intangible personal property -as presently defined." (p. 574)

Appellants rely heavily on the case of *Interlachen Lakes Estates, Inc. v. Snyder,* 304 So.2d 433 (Fla. 1973), wherein the Court had under consideration Section 195.062(1), Florida Statutes, commonly referred to as the "Rose law", which provided in pertinent part:

> ". . .[The tax assessor's manual of instructions] shall provide that platted lands unsold as lots shall be valued for tax assessment purposes on the same basis as any unplatted acreage of similar character until 60 percent of such lands included in one plat shall have been sold as individual lots."

Justice Ervin, for the Court, concluded that such valuation was impermissible under Article VII, Section 4, Florida Constitution, because it provided for valuation of a class of property at less than just value, such property being not one of the classes within the provisos to Article VII, Section 4, i.e. agricultural land, land used exclusively for non-commercial recreational purposes, tangible personal property held for sale as stock in trade, or livestock. This case stands for the proposition only, then, that the Legislature is precluded from classifying property for valuation purposes at *less than* just valuation except in the instances of the provisos to Article VII, Section 4. The result obtained through application of Sections 196.001(2) and 196.199, Florida Statutes, is to require that the leasehold interests defined therein shall be taxed at a just valuation like "all other property" in the state. To accept the appellants' contention that the Legislature is without power to so classify such leasehold interests as real property would not only result in such leashold interests being taxed on the reduced intangible personal property ad valorem rate but would also deprive the political subdivisions wherein the leaseholds are situated from raising revenues from such sources in order to defray the costs of the services supplied to the users thereof, services which include, especially, the education of the children of such users. The holder of a lease on Santa Rosa Island requires no less police protection, fire protection or education of his or her children than does his or her neighbor in the county who occupies under a fee simple title. But if appellants' argument is accepted the revenues derived from the tax of a leasehold as intangible personal property must constitutionally be paid into the coffers of the state rather than the local political

subdivision. See Article VII, Sections 1 and 9. The Legislature clearly has the power to classify so that all property devoted to private use is treated on a parity and, therefore, there is an equitable distribution of the tax burden. Basically, the appellants contend for a constitutional exemption from ad valorem real estate taxation where none exists and,if it did, such an exemption would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions.

Which brings us to the assertion by the appellants that the statutory sections under attack are discriminatory as to them and deprive them of the equal protection mandated by the Florida Constitution and the 14th Amendment to the United States Constititution. Such assertion must be rejected because it has been long recognized that the Legislature, within developed constitutional limits, has broad powers of classification for taxation purposes so as to bring about a fair contribution by all property interests to the tax burden necessary to provide the revenues for the functioning of government. As stated by Mr. Justice Roberts in *Just Valuation & Taxation League,Inc. v. Simpson,* 209 So. 2d 229 (Fla. 1968), where the separate classification of intangible personal property was under attack, ". . .Decisions by the federal courts recognizing the power of the state to classify property for the purpose of taxation are legion. . ." The United States Supreme Court cases cited in his opinion are clearly representative of the cases reflecting that there is no United States constitutional prohibition against the exercise of broad powers of classification by a state legislature for purposes of taxation.

In determining whether the classification by a state legislature is reasonable, the United States Supreme Court has looked to the practical operation of the tax. As stated in *American Oil Company v. Neill,* 380 U.S. 451, 14 L.Ed. 2d 1, 85 S.Ct. 1130 (1965):

> "When passing on the constitutionality of a state taxing scheme it is firmly established that this Court concerns itself with the practical operation of the tax, that is, substance rather than form. (Citations omitted) This approach requires us to determine the ultimate effect of the law as applied and enforced by a State or, in other words, to find the operating incidence of the tax."

The practical effect of Sections 196.001(2) and 196.199, Florida Statutes, is to withdraw exemption from certain users of property and to impose an ad valorem real property tax upon them consistent with the tax imposed upon persons who make similar uses of property.

The proposition put forth by the appellants with respect to leaseholders of commercial property to the effect that they are exempt under Section 196.012(5), Florida Statutes, as performing a public purpose has, we believe, been aptly disposed of in *Straughn v. Camp, supra.* As stated therein at page 695:

> "It is the utilization of leased property from a governmental source that determines whether it is taxable under the Constitution. Furthermore, tax exemptions should be strictly construed against the claimant. State v. Inter-American Center Authority (Fla. 1955) 84 So. 2d 9. Reference is made particularly to Rast v. Hulvey, 77 Fla. 74, 80 So. 750, holding that where property was not being used solely for educational purposes, but was used also as a home by an individual and his family, it was not exempt from taxation. To the same effect see Amos v. Jacksonville Realty and Mortgage Co., 77 Fla. 403, 81 So. 524; Orlando Utilities Commission v. Millican (DCA 4 1969), 229 So. 2d 262; State ex rel. Miller v. Doss, 146 Fla. 752, 2 So. 2d 303; State v. Town of North

> Miami (Fla. 1952) 59 So. 2d 779, text 784; Adams v. Housing Authority of City of Daytona Beach (Fla. 1952) 60 So. 2d 663 and Hillsborough County Aviation Authority v. Walden, supra."

The operation of the commercial establishments represented by appellants' cases is purely proprietary and for profit. They are not governmental functions. If such a commercial establishment operated for profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Island Beach be exempt? No rational basis exists for such a distinction. The exemptions contemplated under Sections 196.012(5) and 196.199 (2) (a), Florida Statutes, relate to "governmental-governmental" functions as opposed to "governmental-proprietary" functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either *directly* or *indirectly* through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates.

Having established that the Legislature has the power constitutionally to tax the leasehold interests in question as real property, we turn to the question of whether or not it has done so. Appellants submit that even if such leasehold interests are not exempt under Sections 196.199(2)(a) and 196.012(5), Florida Statutes, that the tax imposed by Section 196.001(2), Florida Statutes, is merely an ad valorem intangible personal property tax because none of the statutory provisions relied upon by the appellees expressly state that the leasehold estates in question are to be taxed "as an interest in real property". The appellants cite numerous cases from many jurisdictions to the effect that at common law a leasehold interest is considered as a "chattel real" or a species of personal property. It should be noted, however, that each of the two Florida cases cited by appellants as

authority for their position. *Thalheimer v. Tischler.* 55 Fla. 796, 46 So. 514 (1908) and *Oliver v. Mercaldi.* 103 So. 2d 665 (2nd D.C.A. Fla. 1958), states the rule that *in the absence of a statute changing the common law rule* a leasehold estate is a "chattel real" and is to be classed as personalty rather than realty. In construing the provisions of Section 73.10(4), Florida Statutes, in 1962 the Second District Court of Appeal in the case of *State Road Department v. White,* 148 So. 2d 32 (2nd D.C.A. Fla. 1962), cert discharged, 161 So. 2d 828 (Fla. 1964) opined:

> "Turning to the law on the subject of ownership interest by a lessee, we find that, in the law of real property, it is well established that a valid lease for a term of years is a conveyance of an interest in land. Flowers v. Atlantic Coast Line Railway Co., 1939, 140 Fla. 805, 192 So. 321; Campbell v. McLaurin Investment Co., 1917, 74 Fla. 501, 77 So. 277. A lessee's interest in a leasehold estate is thus stated: 'During the life of a lease, the lessee holds an outstanding leasehold estate in the premises, which for all practical purposes is equivalent to absolute ownership. The estate of the lessor during such time is limited to his reversionary interest, which ripens into perfect title at the expiration of the lease.' Rogers v. Martin, 1924, 87 Fla. 204,99 So. 551, 4th Headnote. In the case of DeVore v. Lee, Comptroller 1947, 158 Fla. 608, 30 So. 2d 924, it is stated: 'A lease has been defined as " 'a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own' " and " 'it passes a present interest in the land for the period specified.' " In the law of eminent domain, a lessee for years under a written lease is an owner of property in the constitutional sense, and is entitled to share in the compensation when all or a part of the leased property is taken during the period of the lease.

12 Fla. Jur., Eminent Domain, Sec. 91, Leasehold Interests, page 63."

Section 73.10(4), Florida Statutes, nowhere referred to a lease or leasehold interest, but permitted the jury in a condemnation proceeding to take into consideration damages to an established business of more than five years' standing "owned by the party whose lands are being so taken, located upon adjoining lands owned or held by such party". Accordingly, for purposes of condemnation award it has been concluded by the courts of this state that a leasehold interest is a species of real property under a statute that did not expressly so state. The predecessor to Subsection 196.001(2) and Section 196.199, Florida Statutes, enacted in 1971, was Section 196.25, Florida Statutes, enacted in 1969, which in turn was a verbatim reenactment of Section 192.62, Florida Statutes, enacted in 1961. Section 196.25, Florida Statutes, provided in pertinent part as follows:

"(1) Any real or personal property which for any reason is exempt or immune from taxation but is being used, occupied,owned, controlled or possessed, directly or indirectly by a person, firm, corporation, partnership or other organization in connection with a profit making venture, whether such use, occupation, ownership, control or possession is by lease, loan, contract of sale, option to purchase or in any wise made available to or used by such person, firm, corporation, partnership or organization, shall be assessed and taxed to the same extent and in the same manner as other real or personal property.

"(2) This section shall not apply to property described in subsection (1) when:

* * * *

"(c) The property is owned or used by the state, any county, municipality, or public entity or authority created by statute and is leased or otherwise made available to such person, firm, corporation, partnership or organization by such public body for a consideration in the performance by the public body of a public function or public purpose authorized by law, or which property prior to the effective date of this section was leased for valuable consideration for purposes not otherwise exempt hereunder; . . . ."

Section 196.62, Florida Statutes, was obviously enacted in 1961 by the Legislature in response to the Court's observation in *Park-N-Shop, Inc. v. Sparkman, supra,* that a leasehold interest in publicly owned land was neither tangible nor intangible personal property but that there was no reason why the Legislature could not set up machinery to tax such a leasehold interest. See footnote 3 to the majority opinion in *Dade County v. Pan American World Airways, Inc.*, 275 So. 2d 505 (Fla. 1973). That decision also recognized, in footnote 8, that the exemption contained in Section 196.25, Florida Statutes, repealed in 1971, is covered in the present Section 196.199, Florida Statutes, enacted in 1971 as a part of Chapter 71-133, Laws of Florida 1971.

Section 192.62, Florida Statutes, was expressly construed by this Court in *Hillsborough County Aviation Authority v. Walden*, 210 So.2d 193 (Fla. 1968), wherein we approved the determination by the trial court that the leasehold interest of a motel operator from the Aviation Authority, a tax-exempt body, was a separate, distinct interest in such property and was amendable to assessment and taxation *as real estate* to the lessee, which was using such property for a predominantly private purpose. In the *Walden* case, *supra,* the lessee asserted that it performed a public purpose or function and should thereby enjoy an exemption from taxation upon the same principle as the appellants here contend that they are

exempt under Subsection 196.012(5), Florida Statutes. It will be observed that Section 192.62, Florida Statutes, although using the term "lease" simply says that such use shall be assessed and taxed to the same extent and in the same manner *as other real or personal property.* Accordingly, it required interpretation by the Court to conclude that the leasehold interest in question was to be taxed as real property and conclusively reflects that this Court has accepted that proposition. In his dissent in *Dade County v. Pan American World Airways, Inc., supra,* Mr. Justice Ervin discarded as without merit the contention by the airline that its leasehold interests, if taxable, were only taxable as intangible personal property. He cited as authority therein *Hillsborough County Aviation Authority v. Walden,supra,* and *State Road Department v. White, supra.* In *Straughn v. Camp, supra,* Justice Ervin stated at page 695 of the opinion:

> "The plaintiffs (appellees) admit that the great majority of their leases are those wherein an individual lessee is occupying and enjoying a private home for the use and benefit of the lessee and his or her family. Hillsborough County Aviation Authority v. Walden, supra, construed the predecessor law (F.A. Section 192.62, F.S.A.) to Chapter 71-133 and held that despite exemption of prior leases, an airport authority lease for a motel at an airport is taxable. *It is obvious that holding is applicable here."* (Emphasis supplied)

The language in Justice Ervin's dissent in *Dade County v. Pan American World Airways, Inc., supra,* makes clear that the emphasized language quoted just above refers to a lease for a motel at an airport being taxable as an interest in real property.

Our conclusion is further buttressed by the principle of statutory construction which provides that the Legislature is

presumed to know the existing law when it enacts a statute and is also presumed to be acquainted with the judicial construction of former laws on the subject concerning which a later statute is enacted. See 30 Fla. Jur., Statutes, Section 110, page 270, and *Collins Investment Co. v. Metropolitan Dade County,* 164 So. 2d 806 (Fla. 1964). With this rule of construction in mind we can only conclude that the Legislature was aware of the development of the law in this area from *Park-N-Shop, Inc.,supra,* through *Hillsborough County Aviation Authority v. Walden, supra,* when it enacted the series of statutes hereinabove considered (192.62, 1961; 196.25, 1969; and 196.001(2) & 196.199 (1971). Therefore, in treating with exemptions in Chapter 71-133, Laws of Florida 1971, the Legislature deemed it only necessary to provide that leasehold interests in public lands shall no longer enjoy exemption from ad valorem taxation except under the limited circumstances therein prescribed. The rule is that all property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them. *State ex rel. Wedgworth Farms, Inc. v. Thompson,* 101 So. 2d 381 (Fla. 1958).

Appellants contend that Section 196.001, Florida Statutes, cannot be construed to impose the tax herein asserted in that it appears in the chapter on exemptions. As heretofore alluded to, the Legislature by Section 16 of Chapter 71-134, Laws of Florida 1971, directed that the provisions of Section 196.001 be incorporated in the statutes as Section 192.010 bearing the heading "Property Subject to Taxation." The placement by the Statutory Revision and Indexing Division of such provisions in the chapter on exemptions cannot affect the intent of the Legislature as expressed in Chapter 71-133, Laws of Florida 1971.

Our attention has not heretofore focused upon Subsection (6) of Section 196.199, Florida Statutes, which reads:

> "Property which is originally leased for ninety-nine years or more, exclusive of renewal options, shall be deemed to be 'owned' for purposes of this section."

Since Subsection (2)(a) of Section 196.199, Florida Statutes, effectively removes from the exemption afforded property owned and used by the designated governmental units all leasehold interests which do not serve or perform a governmental, municipal, or public purpose or function as defined in Section 196.012(5), regardless of the length of the lease, it must be concluded that Subsection (6) dealing with 99-year leases was intended by the Legislature to provide a standard for valuation. Leases for an initial term of less than 99 years are to be valued based on the economic value thereof taking into consideration, among other things, the duration of the unexpired term of the lease, while in the case of leases for an initial term of 99 years or more the lessee may be considered to be the owner "in fee simple" and the property subject to the lease shall be valued for tax purposes as all other property owned in fee simple. Since a lease for a term of 99 years or more is tantamount to ownership of the fee, we do not construe this to be an unreasonable classification by the Legislature. The Constitution employs a similar standard in the Homestead Exemption provision found in Article VII, Section 6, Florida Constitution.

Appellants also contest the procedure for enforcement of the tax as found in Section 196.199 (7), Florida Statutes. We do not concur in appellants' objection. Since the fee simple title to the property subject to lease cannot be reached or attached to satisfy the tax indebtedness, the cited section substitutes other property of the taxpayer and allows for recovery by way of an action against the taxpayer. The manner of securing collection of taxes is purely a legislative matter not to be disturbed by the Court unless constitutionally defective. The procedure for collection and enforcement embodied in Section 196.199 (7), Florida Statutes, is

consistent with the nature of the property being taxed and is a legislative determination resting within the legislative power. The rule is thus stated in 84 C.J.S. Taxation, Section 644, at page 1323:

> "While it has been stated as a general proposition that, unless other provision is made, a tax on property is collectable only from the property assessed, it has been recognized that it is *within the power of the state to make one class or kind of property* responsible for taxes levied and assessed against another kind or class of property, and, under constitutional or statutory provisions, a tax may be collected not only from the property against which the levy was made, but also from property other than that against which the tax was levied, and any property of a person against whom a tax has been levied may be subject to process for the collection of the tax. . . . " (Footnotes omitted) (Emphasis supplied)

And at pages 1319-20 it is stated:

> ". . .On the other hand, in many jurisdictions the owner of real estate is *personally liable for taxes levied on the property*, and this is true *notwithstanding* the existence of a lien on the property for the collection of the taxes. Personal liability may exist even in the absence of any provision for obtaining a personal judgment for such taxes. . . ." (Footnotes omitted) (Emphasis supplied)

The foregoing principles are consistent with the collection procedures imposed by Section 199.262, Florida Statutes, dealing with intangible personal property tax.

In response to the suggestion by appellants that a charge in lieu of taxes was taken into consideration in establishing

the rent paid by the lessees we would simply say that if such is the case such lessees may very well be entitled, in a proper forum, to seek an equitable adjustment of their rental payments which would recognize any proven charge incorporated therein which was intended to be in lieu of taxes.

We find no justification for prospective operation of this decision in that we do not find the same state of facts here as relied upon by Mr. Justice Ervin in *Interlachen Lakes Estates, Inc. v. Snyder, supra.* There the majority found that persons relied on a state statute assuming it to be valid despite the new provisions of the 1968 State Constitution. Nor do we find equitable estoppel present as in the case of *City of Naples v. Conboy,* 182 So. 2d 412 (Fla. 1965). In each of those cited cases the taxing authorities acted in accordance with a statute or ordinance and thereby undervalued the property of the taxpayers, thus presumably, lulling the taxpayers into a sense of reliance upon the invalid provisions. In the instant case the taxing authorities have consistently assessed the leasehold interests as real property in accordance with Section 196.001, Florida Statutes, subsequent to its enactment into law in 1971 and have in nowise misled the taxpayers concerning the interpretation of the law. Prior to the enactment of Chapter 71-133, Laws of Florida 1971, in fact since 1961, the general laws of Florida explicitly designated leaseholders on Santa Rosa Island as exempt from taxation. However, Chapter 71-133, Laws of Florida 1971, just explicitly eliminated their designation for exemption. Any reliance upon the interpretation of Chapter 71-133, Laws of Florida 1971, espoused by appellants herein cannot be deemed to be the sort of reasonable reliance which should move this Court to apply this decision only prospectively.

Accordingly, the orders appealed from are affirmed.

ORDER DENYING PETITION FOR REHEARING

IN THE SUPREME COURT OF
FLORIDA
JANUARY TERM, 1976
THURSDAY, MARCH 4, 1976

MARY WILLIAMS, ET AL.,
Appellants, CASE NO. 47,434
vs.
JOHN R. JONES, ETC., ET AL.,
Appellees

DUNES MOTEL, INC., ETC., ET AL.,
Appellants, CASE NO. 47,435
vs.
JOHN R. JONES, ETC., ET AL.,
Appellees

JOHN J. LERGENMILLER, JR., ET AL.,
Appellants, CASE NO. 47, 436
vs.
JOHN R. JONES, ETC., ET AL.,
Appellees

On consideration of the Petition for Rehearing filed by appellants,

IT IS ORDERED that said petition is denied.

OVERTON, C.J., ROBERTS, ADKINS, BOYD, and SUNDBERG, JJ., and FERRIS, CIRCUIT JUDGE, CONCUR

ENGLAND, J., would strike the Petition for Rehearing.

A True Copy
TEST:

CC: Hon. Ernie Lee Magaha, Clerk
Hon. Ernest E. Mason, Judge
Hon. J. McHenry Jones
Hon. Robert L. Shevin
Hon. Larry Levy
Hon. J. B. Hopkins
Hon. Bert Lane
Hon. Jack H. Greenhut
Hon. Gerald L. Brown

Sid J. White
Clerk Supreme Court

By: s/ Kay D. Gent
Deputy Clerk

STATE OF FLORDA

ESCAMBIA COUNTY

I, ERNIE LEE MAGAHA, Clerk of the Circuit Court of the First Judicial Circuit of Florida, in and for Escambia County, hereby certify that the complaints in the cases of Mary Williams v. John R. Jones, et al. (Case No. 47,434 Florida Supreme Court, Case No. 75-496 Circuit Court); Dunes Motel v. John R. Jones, et al. (Case No. 47,435 Florida Supreme Court, Case No. 75-297 Circuit Court); John J. Lergenmiller, Jr., et al. v. John R. Jones, et al. (Case No. 47,436 Florida Supreme Court, Case No. 75-296 Circuit Court); and Joe E. Barnes, As Trustee, etc. v. John R. Jones, et al. (Case No. 47,435, Florida Supreme Court, Case No. 75-544 Circuit Court), have not been amended since May 15, 1975.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Court this 11th day of May, 1976.

s/ Ernie Lee Magaha
ERNIE LEE MAGAHA, Clerk
of the Circuit Court of the
First Judicial Circuit, in and
for Escambia County, Florida

NOTICE OF APPEAL

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FILED FOR RECORD: Apr 9 4:30 P.M. '76
Ernie Lee Magaha
Clerk Circuit Court
Pensacola, Fla.

MARY WILLIAMS,
Appellant
WILLIAM DUNCAN McDAVID and
BLANCE L. McDAVID, husband and wife
Intervenor-Appellants
vs DOCKET NO. 47-434
JOHN R. JONES, as County Appraiser of
Escambia County, Florida, formerly
known as Tax Assessor of Escambia County,
Florida; E. J. GIBBS, JR., as Tax Collector
of Escambia County, Florida; GRADY ALBRITTON,
ZEARL R. LANCASTER, SAM ARMOUR, L.D.
McARTHUR and CARL WEST, as and constituting
the Board of Tax Adjustment of Escambia County,
Florida; and STATE OF FLORIDA DEPARTMENT OF
REVENUE,
Appellees.

DUNES MOTEL, INC., a Florida corporation,
Appellant,
vs DOCKET NO. 47-435
JOHN R. JONES, as County Appraiser of
Escambia County, Florida, formerly
known as Tax Assessor of Escambia County
Florida; E. J. GIBBS, JR., as Tax Collector
of Escambia County, Florida- GRADY ALBRITTON,
ZEARL R. LANCASTER, SAM ARMOUR, L. D.
McARTHUR and CARL WEST, as and constituting the
Board of Tax Adjustment of Escambia County, Florida;

and STATE OF FLORIDA DEPARTMENT
OF REVENUE,
Appellees

JOE E. BARNES, as Trustee for Island View
Development Corporation, a Florida
corporation,
Appellant

SOUTHHILL CORPORATION, an Alabama Corporation,
Intervenor-Appellant
vs
JOHN R. JONES, as County Appraiser of
Escambia County, Florida, formerly known
as Tax Assessor of Escambia County, Florida;
E. J. GIBBS, JR., as Tax Collector of
Escambia County, Florida; GRADY ALBRITTON,
ZEARL R. LANCASTER, SAM ARMOUR, L.D.
McARTHUR and CARL WEST, as and constituting
the Board of Tax Adjustment of Escambia County,
Florida; and STATE OF FLORIDA DEPARTMENT OF
REVENUE,
Appellees

JOHN J. LERGENMILLER, JR.,
Appellant,

HAROLD S. DEY; CLARENCE HICKS and
ARLETTA HICKS, husband and wife; JAMES M.
LEIB and CAROLYN W. LEIB, husband and wife;
W. J. NOONAN and MARGARET L. NOONAN,
husband and wife; KENNETH PFEIFFER; HOWARD L.
REITZ; and SAMUEL LOGAN;
Intervenor-Appellants,

vs.

JOHN R. JONES, as County Appraiser of Escambia County, Florida, formerly known as Tax Assessor of Escambia County, Florida; E. J. GIBBS, JR., as Tax Collector of Escambia County, Florida; GRADY ALBRITTON, ZEARL R. LANCASTER, SAM ARMOUR, L. D. McARTHUR and CARL WEST, as and constituting the Board of Tax Adjustment of Escambia County, Florida; and STATE OF FLORIDA DEPARTMENT OF REVENUE
Appellees.

DOCKET NO. 47-436

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Mary Williams, William Duncan McDavid and Blance L. McDavid, husband and wife, Dunes Motel, Inc., a Florida corporation, Joe E. Barnes, as Trustee for Island View Development Corporation, a Florida corporation, Southhill Corporation, an Alabama Corporation, John J. Lergenmiller, Jr., Harold S. Dey, Clarence Hicks and Arletta Hicks, husband and wife, James M. Leib and Carolyn W. Leib, husband and wife, W. J. Noonan and Margaret L. Noonan, husband and wife, Kenneth Pfeiffer, Howard L. Reitz and Samuel Logan, the Appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Florida affirming the trial Court in upholding the constitutionality of *Chapters 196.001(2), 196.199(6) and 196.199 (7)(a), Florida Statutes 1973*, as applied to Appellants' leasehold interests, which judgment was rendered on December 17, 1975, and made final on March 4, 1976, by order denying petition for rehearing of said judgment.

This appeal is taken pursuant to *28 U.S.C.* § *1257(2).*

J. McHENRY JONES, P.A.
703-5 South Palafox Street
Pensacola, Florida 32501
Attorneys for Appellants

BY S/ J. McHenry Jones
J. McHenry Jones

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served upon all counsel of record, by mail, each of whom is specified below, in the following manner:

A copy of said Notice of Appeal was enclosed in an envelope and deposited in a United States Post Office, with first class postage prepaid, addressed to the parties below named, at their respective post office addresses:

J. B. Hopkins, Esq.
The Lawyers Building
314 South Baylen Street
Pensacola, Florida 32501
Counsel for: John R. Jones, Tax Appraiser

Bert Lane, Esq.
Beggs and Lane
Brent Annex Building
Pensacola, Florida 32501
Counsel for: E. J. Gibbs, Jr., Tax Collector

Jack H. Greenhut, Esq.
Professional Building
West Government Street
Pensacola, Florida 32501
Counsel for: Board of Tax Adjustment

Honorable Robert L. Shevin
Attorney General
The Capitol
Tallahassee, Florida 32304
Attention: Larry Levy, Esq.
Assistant Attorney General
Counsel for: Florida Revenue Department

Gerald L. Brown, Esq.
Wells, Brown, Caton & Brady
Post Office Box 12584
Pensacola, Florida 32573
Co-Counsel for John R. Jones, Tax Appraiser

This 9th day of April, 1976.

J. McHENRY JONES, P.A.

By: S/ J. McHenry Jones
J. McHenry Jones

FILED IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR ESCAMBIA COUNTY, ON APRIL 9, 1976.

FILED IN THE SUPREME COURT OF THE STATE OF FLORIDA ON APRIL 12, 1976.

Supreme Court, U. S.
FILED
JUN 21 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 75-1735

MARY WILLIAMS, ET AL.,
Appellants,

vs.

JOHN R. JONES, ET AL.,

Appellees,

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF FLORIDA

MOTION TO DISMISS OR AFFIRM

ROBERT L. SHEVIN
ATTORNEY GENERAL

LARRY LEVY
ASSISTANT ATTORNEY GENERAL
Department of Legal Affairs
The Capitol
Tallahassee, Florida

ATTORNEYS FOR ALL APPELLEES

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ROBERT L. SHEVIN
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Department of Legal Affairs
The Capitol
Tallahassee, Florida

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PRELIMINARY STATEMENT

The Appellants herein, Plaintiffs in the Circuit Court and Appellants in the Florida Supreme Court, will be referred to as the "Taxpayers." The Appellees herein were Defendants in the Circuit Court, Appellees in the Florida Supreme Court, and will be referred to herein, where necessary to refer to each of the Defendants individually by name, as appears in the caption of the case. Where referred to collectively, herein or as embracing all appellees, all appellees will be referred to as the "State."

JURISDICTION

The Taxpayers have appealed from a decision of the Florida Supreme Court styled Williams, et.al. v. Jones, Fla. 326 So.2d 425, decided December 17, 1975, rehearing denied March 4,1976. The statute under attack has been previously before the United States Supreme Court in the case of Straughn et. al. v. Camp, Fla. 293 So.2d 689, 419 U.S. 891, 42 L.ed 2d 135, 95 S.Ct. 168.

The statutes in that case and the case at bar emanated through the enaction of Ch. 71-133, Laws of Florida, and the specific statutes under attack here were part and parcel of said law. In the Straughn v. Camp case, supra, the Supreme Court dismissed the appeal for want of a substantial federal question. It is the position of the State that the questions presented by this appeal are also plainly insubstantial and that the appeal should

be dismissed, or in the alternative, the Court should affirm the lengthy and well-reasoned decision of the Florida Supreme Court. The Florida Supreme Court upheld the various statutory provisions attacked by the Taxpayers in a 7-0 decision.

Accordingly, pursuant to Rule 16, Supreme Court Rules, the State hereby moves that the appeal be dismissed because it does not present a substantial federal question, or in the alternative, that the Supreme Court decision sought to be reviewed by the Taxpayers, be affirmed because it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

The Taxpayers challenge the validity of §196.001(2), and §196.199(6), F.S., as being repugnant to the United States Constitution denying the Taxpayers equal protection of the law under the 14th

Amendment of the United States Constitution. In their notice of appeal, Taxpayers indicate that they are appealing the decision of the Supreme Court of the State of Florida upholding the validity of §196.001(2), §196.199(6), and §196.199(7)(a), F.S., but since their brief does not mention or attack §196.199(7)(a), F.S., it is presumed that the Taxpayers have abandoned their contentions with regard to that section.

It is the position of the State that the questions the Taxpayers seek to have reviewed are so wanting in substance as not to need further argument, in view of previous decisions of the United States Supreme Court on the same points of law. Hodges v. Snyder, (1923) 43 S.Ct. 435, 261 U.S. 600, 67 L.ed. 819; City of Boston v. Jackson, Mass. 1922, 43 S.Ct. 129, 260 U.S. 309, 67 L.ed. 274; Missouri Pac. R.Co.v. Castle, Neb. 1912, 32 S.Ct.

606, 224 U.S. 541, 56 L.ed. 875; Delpozo v. Wilson Cypress Co. Fla. 1925, 46 S.Ct. 57, 269 U.S. 82, 70 L.ed. 172; Stotland v. Pennsylvania, Pa. 1970, 90 S.Ct. 1552, 398 U.S. 916, 26 L.ed. 2d 83; and Straughn v. Camp, supra.

ARGUMENT

POINT I

BASED ON PRIOR UNITED STATES SUPREME COURT DECISIONS, TAXPAYERS' APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THE CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

AS TO §196.001(2), F.S.

The Taxpayers contend that this section of the Florida Statutes is unconstitutional discriminating against the Taxpayers and denying them equal protection of law because the law does not apply to all leasehold interests.

In response to this contention, the Florida Supreme Court after having previously stated in the first paragraph that the Circuit Court had passed directly upon the validity of §196.001(2), §196.199(6), F.S., and

§196.199(7), F.S., stated at page 431:

> The result obtained through application of Sections 196.001(2) and 196.199, Florida Statutes, is to require that the leasehold interests defined therein shall be taxed at a just valuation like 'all other property' in the state. To accept the appellants' contention that the Legislature is without power to so classify such leasehold interests as real property would not only result in such leasehold interests being taxed on the reduced intangible personal property ad valorem rate but would also deprive the political subdivisions wherein the leaseholds are situated from raising revenues from such sources in order to defray the costs of the services supplied to the users thereof, services which include, especially, the education of the children of such users. The holder of a lease on Santa Rosa Island requires no less police protection, fire protection or education of his or her children than does his or her neighbor in the county who occupies under a fee simple title. But if appellants' argument is

> accepted the revenues derived from the tax of a leasehold as intangible personal property must constitutionally be paid into the coffers of the state rather than local political subdivision. See Article VII, Sections 1 and 9. The Legislature clearly has the power to classify so that all property devoted to private use is treated on a parity and, therefore, there is an equitable distribution of the tax burden. Basically, the appellants contend for a constitutional exemption from ad valorem real estate taxation where none exists and, if it did, such an exemption would undoubtedly be discriminatory and violative of the equal protection provision of the Florida and United States Constitutions. (e.s.)

The classification of private leasehold interests in governmentally owned property serves the function and purpose of requiring all possessors or users of real property to pay ad valorem real property taxes because of such use. Were it not for the

requirements of the statute, persons leasing property from governmental bodies would not be required to pay tax because the property itself is either exempt or immune. This means that such a private leaseholder of governmentally owned lands would be placed in a much better competitive position than a private leaseholder leasing from a private land owner because in the latter situation ad valorem real property taxes are either paid by the lessor by virtue of his ownership, or by the lessee by virtue of the lease agreement. It is patently obvious that such a situation is unfair to the lessee from a private lessor. The effect of the Florida Statutes is to require that all property being used for a private

purpose has to bear its just portion of the ad valorem tax burden of the County and School Board and other public entities levying an ad valorem property tax. Instead of creating discrimination, the statutes eliminated it as was recognized in the Florida Supreme Court at page 432; that is, all property devoted to private use is treated on a parity so that there is an equitable distribution of the tax burden. The Supreme Court continued at page 432:

> Which brings us to the assertion by the appellants that the statutory sections under attack are discriminatory as to them and deprive them of the equal protection mandated by the Florida Constitution and the 14th Amendment of the United States Constitution. Such assertion

must be rejected because it has been long recognized that the Legislature, within developed constitutional limits, has broad powers of classification for taxation purposes so as to bring about a fair contribution by all property interests to the tax burden necessary to provide the revenues for the functioning of government. As stated by Mr. Justice Roberts in Just Valuation & Taxation League, Inc. v. Simpson, 209 So.2d 229 (Fla.1968), where the separate classification of intangible personal property was under sttack, '. . . Decisions by the federal courts recognizing the power of the state to classify property for the purpose of taxation are legion. . .' The United States Supreme Court cases cited in this opinion are clearly representative of the cases reflecting that there is no United States constitutional prohibition against the exercise of broad powers of classification by a state legislature for purposes of taxation. (e.s.)

This statement is squarely consistent with many United State Supreme Court decisions on the question of state legislative power to classify for tax purposes so as to achieve an equitable distribution of the tax burden.

The Court cited the case of American Oil Company v. Neill, 380 U.S. 451, 85 S.Ct. 1130, 14 L.Ed.2d 1 (1965), stating at page 432:

> 'When passing on the consitutionality of a state taxing scheme it is firmly established that this Court concerns itself with the practical operation of the tax, that is, substance rather than form. (Citations omitted) This approach requires us to determine the ultimate effect of the law as applied and enforced by a State or, in other words, to find the operating incidence of the tax.'

The practical effect of Sections 196.001(2) and 196.199, Florida States, is to withdraw

exemption from certain users of property and to impose an ad valorem real property tax upon them consistent with the tax imposed upon persons who make similar uses of property. (e.s.)

The Court recognized and discussed the classifications created by the Statutes at page 430 as follows:

> The classifications created by Section 196.001(2) and Section 196.199, Florida Statutes, result in the holders of leases of publicly owned lands bearing their fair share of the tax burden, thus placing them on a parity with other real property in the private sector devoted to similar uses. (e.s.)

Thus, it is readily apparent that instead of producing discrimination, the present laws prevent it.

If such leaseholds were not taxed, the result would be that the lessees from private property lessors would

be placed in a disadvantagous competitive position compared to lessees from governmental lessors. For instance, lessees of privately owned residences, motels, or other commercial establishments located along the Miracle Strip near Panama City have to take into consideration ad valorem taxes when entering into such leases. Were it not for the laws under attack, lessees of residences, motels, or other commercial establishments on Santa Rosa Island would not incur, either directly or indirectly, the impact of ad valorem property taxes. The unfairness of such is readily apparent when considering the motels involved in the present suit. The motels are allowed to charge the going rates for such motels

anywhere on the beaches. Thus similar motels on Panama City Beach and Pensacola Beach would be charging identical rates but the motel at Panama City would be realizing less profit per room because of the ad valorem tax impact.

Assume further that both motels were operated by lessees under 99 year leases, and that both leases contained provisions requiring the lessees to pay any and all ad valorem taxes levied. The inequity and unfairness is readily apparent if the lessee of the government owned land is not taxed. Were it not for the statutes taxing such leaseholds, the private property leaseholder would be discriminated against in favor of the government lessee.

The impact of the laws is clear. It requires taxation of all property not used for exempt purposes.

In the case of Frank Walters v. City of St. Louis, 347 U.S. 231, 98 L.Ed. 660, 74 S.Ct. 505, the court said:

> The power of the State to classify according to occupation for the purpose of taxation is broad. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. (e.s.)

In the instant case, the test is met. Leaseholders of government property are taxed because otherwise they would be treated to a tax advantage compared to leaseholders

of private property. Additionally, were they not taxed, property used for private purposes would be able to avoid the impact of tax.

Further therein the court stated:

> Our disapproval of the wisdom or fairness of so doing is not a ground for interference. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action. (e.s.)

Later the court stated:

> In its discretion a state may tax all, or it may tax one or some, taking care to

> accord to all in the same class equality of rights. (e.s)

In the instant case all leaseholders of government property are taxed identically.

The court continued by quoting from the landmark case of Madden, Executor v. [Commonwealth of] Kentucky, 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590, as follows:

> 'The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that "the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation," and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax

programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.' (e.s.)

Here, the tax scheme achieves an equitable distribution of the tax burden by requiring all leaseholders, whether government or private, to bear the impact and burden of property taxes either directly or indirectly.

The tax scheme produces equality of treatment and eliminates discrimination and inequities. It eliminates the unequal distribution of tax burden which results when private individual leaseholders use public property for private purposes by taxing such use in the form of an ad valorem property tax on the leaseholder. Thus the taxation of such leaseholds is not only justified but is demanded to avoid the inequities which result if they are not taxed.

These basic principles were recognized by the United States Supreme Court in the case of Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 2 L.Ed.2d 480, as follows at page 232:

> 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law. That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy.' (e.s.)

The differences or distinctions here are real as demonstrated previously. The burden placed on the taxpayers discussed in the Madden, Executor case, supra, of negativing every conceivable basis which might support the present legislative arrangement has not been carried. The statutes at bar are clearly within the guidelines set down by the United States Supreme Court. The basis for the statutes and the classification of

private leaseholds in governmentally owned real property and subjecting of same to ad valorem real property taxation is for the purpose of achieving an equitable distribution of the tax burden insuring that all persons using property for private purposes bear their just burden of taxation for the support of the governmental unit involved. This means that persons or corporations leasing motels or other commercial establishments on Santa Rosa Island, which is owned in part by Escambia County, are treated identically to persons or corporations leasing motels or other commercial establishments from private land owners in other beach locations throughout the State of Florida. Thus the private lessee leasing from a governmental unit and the private lessee leasing from a

private individual are treated identically insofar as the tax burden on the property is concerned.

Accordingly, it is readily apparent that the pronouncements of the Florida Supreme Court are squarely consistent with the pronouncements of the United States Supreme Court on the questions presented. In fact, the Florida Supreme Court recognized and followed many of the United States Supreme Court decisions cited in the case of Just Valuation and Taxation League v. Simpson, Fla. 209 So.2d 229. Accordingly, it is patently obvious that the questions relating to equal protection of the law which the Taxpayers attempt to have reviewed by the United

States Supreme Court are wholly unsubstantial based on past decisions of this court. Thus, since the federal question presented is not substantial, the appeal should be dismissed, or in the alternative, the motion to affirm the judgment sought to be reviewed should be granted, since it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

AS TO §196.199(6), F.S.

All of the United States Supreme Court decisions and other decisions cited herein are equally applicable to the Taxpayers contentions as to §196.199 (6), F.S. Thus the previous pronouncements and quotations referring to such decisions are equally applicable here.

As to this statute, §196.199(6), F.S., the Taxpayers argue that the statute discriminates against holders of 99-year leaseholds compared to holders of leaseholds of a lesser term.

The standard enunciated in the Madden, Executor case, supra, requiring the taxpayer to establish that the legislative arrangement is invalid on every conceivable basis which might support it

simply has not been made. First, under Florida law, all real and personal property is required to be taxed at its just value following the criteria set forth in §193.011, F.S., except property which is allowed by the Constitution to be classified and taxed at a percentage of or less than just value. See Article VII, Sec. 4, Florida Constitution 1968 which allows for special treatment of agricultural land, land used exclusively for non-commercial recreational purposes, tangible personal property held for sale as stock in trade and livestock.

It is common knowledge that real property is comprised of a bundle of rights consisting of many and numerous distinct interests. These rights may include the right of use, possession,

occupancy, ingress, egress, alienation, and various rights in the sub-surface and minerals found in or under real property. It is common knowledge that the 99-year lease period is the most common period for long term leases in real estate custom as opposed to a 97, 95, or 93 year duration or some lesser period. All the Legislature has done is to equate such a 99-year lease period with ownership for valuation purposes recognizing that a lessee under such a lease arrangement has virtually the same rights in and to the real property as would the owner. This is entirely consistent with logic and reason. Such leassees are allowed to sell their rights under the lease to purchasers and suffice it to say that the sales of such rights often bring a tidy sum.

Then too, many of the leases contain renewal options for an additional 99 years.

Additionally, under the Florida Constitution, Article VII, Sec. 6, the Florida Constitution authorizes a homestead exemption on leaseholds initially for a term in excess of 98 years, which would be 99 years or more. So on the one hand the taxpayers owning and living in residences on Santa Rosa Island would supposedly contend that they should be allowed to claim homestead tax exemption on the property as if they owned it, but should not be taxed as if they owned it. The inconsistency of this contention is patently obvious.

Furthermore, the Taxpayers never contended in the lower court and cannot contend now that they have been taxed

higher than just value. The allegations of the Taxpayers' complaint relate solely to the manner of valuation. Nowhere therein is it suggested that a 99-year lease is not valued at fair market value, or that a 24-year lease is not valued at fair market value. Furthermore, there is no specific factual allegation that leases of less than a 99-year duration, if taxed as if owned, would produce a different amount of taxes.

In all instances, the criteria found in §193.011, F.S., would be followed to arrive at just value. The willing buyer, willing seller concept would apply regardless of the duration of the lease. The rights in the property covered under any particular lease would alter the market value of the lease as would the duration of the lease, but the

just value concept would not change. For instance, a parcel of property held under a 99-year lease with a 70 year remaining time period would be based on the fair market value of such remaining property rights which would in turn be based in large part on comparable sales of similar property which would always reflect the market for parcels of property subject to leaseholds and whatever restrictions were found in the leases. The duration of the lease could affect the fair market value or just value of the property because it would affect the sales price. However, the same would be true of a fee simple deed incumbered by numerous deed restrictions. There are matters which may affect the just value in either situation.

The Taxpayers have not contended or cited any specific situation where the

commands of §196.199(6), F.S., have resulted in their property being assessed at greater than the fair market value of the rights contained in the unexpired portion of the lease agreement.

In short, the Florida Constitution treats leaseholds for 99 years or more as if the property were owned for homestead tax exemption purposes. The statute treats such leaseholds as owned for taxation purposes. If such is ridiculous, as asserted by the Taxpayers at page 15 of their brief, then why don't such Taxpayers contend that they have no right to claim homestead tax exemption if they reside on the Island?

The Taxpayers' brief is replete with adamant statements which are inconsistent with the United States Supreme Court decisions. For instance, at page

17 of said brief, it is stated that "it is beyond the power of the legislature to levy an ad valorem tax on one class of property (a leasehold interest) based upon the value of a different class of property (fee)." All of the United States Supreme Court decisions cited herein point out that the state does have the power to classify for tax purposes, and in fact, in matters of taxation, the power to classify is recognized in its broadest form.

At page 16 of the Taxpayers' brief, the case of Devore v. Lee, 156 Fla. 699, 24 So.2d 234, is cited for the position that the difference between a long term lease and a short term lease is not a proper basis for the determination of the taxibility of a lease. That case has nothing to do with real property

taxation. It involved documentary stamp tax and the question of whether the lease agreement was subject to documentary stamp tax so it is immaterial to the issues of the case at bar.

At page 17 of their brief, the Taxpayers cite the case of Interlachen Lakes Estates, Inc. v. Snyder, Fla. 304 So.2d 433. In that case the Supreme Court held invalid a statute, §196.062 (1), F.S., commonly referred to as the Rose Law, on the ground that the effect of the statute was to tax the property held by developers at a percentage of or less than just value which violated the Florida Constitution which commanded that all property be assessed at just value. There is no attempt in the case to assess any property at a percentage of or less than just value. In fact,

what the Taxpayers are contending; that is, that they should be exempt from tax, would be impermissible under such provision because under Florida law all property used for private purposes must be taxed at its just value based upon such use.

Beginning at page 10 of their brief, the Taxpayers list various provisions of the leases in an attempt to show that the property is substantially burdened by restrictions. Suffice it to say that numerous deeds contain similar restrictions, for instance, as to the keeping of livestock. And it is common knowledge that all property is held subject to the police power to regulate for health purposes. Most metropolitan cities today have ordinances which require that property be kept in

good repair, free from trash, debris, and obstruction, and generally allow the city or county to go into the property and take appropriate measures to clean up the property, or cut the grass and then bill the property owner.

As to the requirement of maintaining proper books and records for accounting purposes, it is common knowledge that leases involving commercial establishments contain such provisions because in many instances the lease payment is based in part on the amount of business done or the gross receipts derived therefrom.

In short, the lease provisions are not unique.

For the same reasons as expressed herein regarding §196.011(2), F.S., it is patently clear that the federal

question presented is unsubstantial and the appeal should be dismissed, or in the alternative the motion to affirm the judgment of the Florida Supreme Court sought to be reviewed, should be granted since it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

CONCLUSIONS

In 1949, the Legislature of the State of Florida through Ch. 25810, Laws of Florida, 1949 Special Acts, granted a tax exemption to all the real and personal property rented or leased to others by Escambia County, Florida, and the Santa Rosa Island Authority from state, county or municipal ad valorem property taxes of every kind. In 1971, through the enaction of Ch. 71-133, Laws of Florida, the Legislature took away that exemption. Understandably, the Taxpayers did not want to lose it, but the right to tax and the right to exempt are purely legislative powers and no taxpayer has any perpetual right to tax exemption, including the Taxpayers in the case at bar. For all the above and foregoing reasons and based on all the authorities cited herein, the State respectfully moves that this Court dismiss the appeal or that it affirm the

judgment sought to be reviewed.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

LARRY LEVY
ASSISTANT ATTORNEY GENERAL
Department of Legal Affairs
The Capitol
Tallahassee, Florida

ATTORNEYS FOR ALL APPELLEES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss or Affirm has been furnished by U. S. Mail to J. McHenry Jones, Esq., P. O. Box 732, Pensacola, Florida 32592, this 21st day of June, 1976.

Larry Levy
Assistant Attorney General